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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873 Sub-No. 57

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

-CONTROL-

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

RESPONSIVE APPLICATION OF NEW ORLEANS TERMINAL RAILROAD, LLC

Pursuant to the Decision of the Surface Transportation Board ("Board" or "STB") served in this proceeding on August 18, 2026, the Board's governing statutes at 49 U.S.C. §11324(c), and the Board's regulations at 49 C.F.R. Part 1180, New Orleans Terminal Railroad, LLC ("NOTR") hereby submits this Responsive Application for the Board's consideration. As explained in more detail in the sections below, the accompanying verified statement of Bryan Boaz, President of NOTR ("Boaz V.S."), and the accompanying verified statement of Timothy D. Crowley and Daniel L. Fapp, President and Senior Vice President, respectively, of L. E. Peabody & Associates, Inc., ("Crowley/Fapp V.S.") and other attached materials, should the Board decide on the record before it that the merger of Union Pacific Railroad Company ("UP") and Norfolk Southern Railway Company ("NS") proposed in this proceeding can be made consistent with the public interest if it is approved subject to conditions to alleviate the potentially significant competitive and operational harms that will result from the merger, NOTR proposes

a feasible, structural, long-term solution to the anti-competitive outcome of the merger that will occur in the New Orleans Terminal Area, as that term is described in this Responsive Application. Namely, NOTR proposes to counter the consolidation of all the track infrastructure in the terminal area into the merged carrier with the establishment of NOTR as a neutral terminal railroad offering equal access to each of the Class I railroads, the New Orleans Public Belt Railroad ("NOPB"), and Amtrak, all of which operate trains in and through the New Orleans Terminal Area.

I. INTRODUCTION

A series of maps that illustrate the New Orleans Terminal Area, the current ownership and dispatch control of such tracks, and potential outcomes of the merger as proposed in the Amended Application and described herein are assembled in Exhibit 1. Today, the through corridor across New Orleans is controlled by two independent competitors: UP and NS. UP dispatches the Huey P. Long Bridge, which the NOPB owns and maintains. UP also dispatches the crossover movements over a railroad line owned by the Canadian National Railway ("CN") between East Bridge Junction and the CN/IC Connection and today across the CN (although CN maintains ultimate authority for this infrastructure). NS owns and dispatches a 7.7-mile rail line known as the New Orleans Terminal Back Belt Line (the "Back Belt") and the additional line from Oliver Junction to CP Seabrook, a distance of 3.5 miles.

A merger of UP and NS would result in the combined UP/NS carrier acquiring the power to control the movement of the vast majority of freight movements and all Amtrak trains through the New Orleans Terminal Area because the combined railroad will own and/or dispatch the primary pathways for eastern and western Class I carriers (and CN and Canadian Pacific Kansas City ("CPKC")) to interchange traffic over the terminal tracks. Combined with the stated intent

of the merger applicants to eliminate existing interchanges and maximize the merged railroad's length of haul for transcontinental movements, physical control of the track infrastructure in the New Orleans Terminal Area will provide UP and NS with strong incentives and the actual ability to reduce competition with other Class I railroads and prioritize the operations and capacity utilization of the merged carrier. Consolidation of the track assets and operations into one railroad will also allow a third-party carrier to neutrally meter the flow of traffic across the New Orleans gateway.

The transaction described herein would entail NOTR's acquisition of the 7.7-mile Back Belt line from NS ideally through divestiture, but in the alternative by a long-term lease, and also dispatching authority over approximately 16.4 miles of track in total. The transaction meets all the requirements of a "minor" transaction under 49 C.F.R. §1180.2(c). Because the sole purpose of NOTR's application is to remediate an anti-competitive outcome of the merger and significantly enhance competition between all the remaining Class I railroads going forward by establishing NOTR as a neutral terminal railroad providing service to all railroads (Class I and otherwise) on equal terms, "the transaction clearly will not have any anticompetitive effects." *Id.* at §1180.2(b)(1). Finally, to the extent the proposed transaction could somehow be construed to have some anticompetitive effect, "any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs." *Id*. at §1180.2(c)(2).

For these reasons, this Responsive Application contains the information in the Board's regulations required for "minor" transactions. However, in order to provide the Board with additional information upon which to base its decision, this Responsive Application also includes a draft Operating Plan, drafts of a Purchase and Sale Agreement and Lease Agreement, and

marketing information.[1] This Responsive Application is also supported by the Verified Statement of Mr. Boaz, who provides factual background on NOTR, CLR, and details of the proposed transaction, including a discussion of how NOTR will be staffed and operated. Boaz V.S. at 6-7. NOTR's notes that in a recent letter to the STB, Mr. Brian Gorton, former General Manager of UP's Gulf Coast service unit, which included New Orleans, who also held leadership roles in UP's Harriman Dispatch center, and who was also President and Chief Operating Officer of Conrail, has expressed his support for the project and his willingness to assist in its implementation. The Verified Statement of Messrs. Crowley and Fapp provide additional information on the incomplete capacity analyses for the New Orleans Terminal Area included in the Revised Application, on the relevant market for NOTR operations, and on how NOTR's implementation plan fits with the Applicants' post-merger operating plans.

Section 1180.6(a): Identification of Applicant and Person to Whom Correspondence with Respect to this Application Should be Addressed

Applicant NOTR is a Louisiana limited liability company and a non-carrier formed for the purpose of fulfilling the proposed transaction proposed in this Responsive Application. Its office address is 2381 Rosecrans Ave., Suite 425, El Segundo, CA 90245. NOTR would become a Class III carrier subject to the Board's jurisdiction upon the receipt of the authority requested by this Responsive Application. No Class I railroad would have an ownership interest in NOTR, either upon its creation or in the future, to ensure its neutrality in providing access and service to

[1] *See* Docket No. FD 36500, *Canadian Pacific Ry Ltd; Canadian Pacific Railway Co.; Soo Line Railroad Co.; Central Maine & Quebec Railway US, Inc.; Dakota Minnesota & Eastern Railroad Corp.; and Delaware & Hudson Railway Co., Inc. – Control – Kansas City Southern; The Kansas City Southern Railway Co.; Gateway Eastern Railway Co.; and the Texas Mexican Ry Co.*, (Decision 13 served February 18, 2022), at 3-4 (additional information on operating plan and marketing could aid Board's decision on "minor" classification).

all Class I railroads.

NOTR is a subsidiary of County Line Rail Fund II, LP a holding company based in Houston, Texas that utilizes the trade name CLR.[2] Mr. Boaz is also CLR's Chief Commercial Officer.

The name, address, and contact information of the person to whom correspondence with respect to this Responsive Application should be addressed are:

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Section 1180.6(a)(1)(i): Summary of the Proposed Transaction

The proposed transaction has two components. First, NOTR would acquire the Back Belt from NS (including dispatching responsibilities) through divestiture or long-term lease. As shown on Exhibit 1, the Back Belt extends westward from Oliver Junction, milepost 7.9 NT, to East City Junction at milepost 3.8 NT, and further from East City Junction at milepost 3.6 A to CN/IC Connection, milepost 0.0 A, a distance of approximately 7.7 miles. [3]

In combination with receiving authority to acquire and operate the Back Belt, the Board would also direct UP and NS to assign NOTR the authority to dispatch the movement of freight

[2] *See* https://www.clrail.com/, Boaz V.S. at 4. County Line Rail Fund II, LP is an affiliate of County Line Rail Fund I – also utilizing the trade name CLR – which owns and operates three rail terminals and owns one Class III short line railroad in the Texas Gulf region: County Line Industrial Park ("CLIP"), CLR Silsbee, and CLR Buna, and the Sabine River & Northern Railroad ("SRN"), respectively. Because upon approval of this Responsive Application County Line Rail Fund I would control two Class III railroads under the Board's rules, approval would be accompanied by the appropriate control filing under the Board's regulations.

[3] *See* NS Alabama Division Timetables, New Orleans Terminal.

trains and Amtrak trains over the Back Belt and certain other tracks shown on Exhibit 1. These include (1) the tracks between West Bridge Junction and East Bridge Junction and between East Bridge Junction and CN/IC Connection, including dispatching trains over the Huey P. Long Bridge; (2) the tracks between MP NO 190.6 at Seabrook to MP NO 194.1 at Oliver Junction; and (3) authority to align the CN interlockers at East Bridge Junction Tower.

As stated previously, NOTR has included with this Responsive Application a proposed Operating Plan which provides substantial additional detail about the proposed transaction.

Section 1180.6(a)(1)(ii): Proposed Time Schedule for Consummation of the Proposed Transaction

It is NOTR's desire that the proposed transaction would be consummated as soon as allowed by the Board's regulations, and the relevant terms of the decision granting this Responsive Application. NOTR anticipates that consummating the entire transaction of transferring dispatching authority and related transitional tasks and logistics would be implemented in phases by NOTR, UP, and NS over the implementation period of the merger to ensure there are no disruptions to traffic flow in the New Orleans Terminal Area while NOTR is established. For example, NOTR will take over a segment only after the required agreements, trained personnel, PTC arrangements, maintenance readiness, emergency contacts, published tariff and regulator-required programs are in place. for that segment (Operating Plan Section 14). The transition would be subject to Board oversight and input.

The Applicants' own planning shows that the integration of UP and NS dispatching is a multi-year undertaking and that it will be carried out in phases rather than at closing. The Applicants expect a pre-closing period of approximately {{ [redacted] }}, running from the regulatory filings through approval to closing, during which they would complete {{ [redacted] }}. After closing, the

Applicants plan on a {{ [redacted] }}. *See* Crowley/Fapp VS at 16-17.

The Applicants' timeline shows that NOTR's dispatching start-up could be accommodated within the Applicants' planned integration period. NOTR's task is much narrower as it will dispatch only the Back Belt, the Huey P. Long Bridge, and the NS line to Seabrook, a territory of approximately 16.4 miles. Also, NOTR's implementation is designed in overlapping phases that can coincide with the Applicants' transition plans. *See* Boaz V.S. at 14.

Section 1180.6(a)(1)(iii): Purpose Sought to be Accomplished by the Proposed Transaction

The merger of UP and NS as proposed would put dispatching over the Huey P. Long Bridge, and over the Back Belt, Oliver Yard, and Avondale Yard under one Class I carrier for the first time in the long history of the New Orleans Terminal Area. If the merger was approved, the combined railroad would have strong incentives to favor its own commercial interests, and would decide, train by train, the order in which four rival Class I carriers, NOPB and four Amtrak routes traverse the gateway. That concentration of control does not exist today in the New Orleans Terminal Area, and it would be created only because of the merger transaction. As discussed below in subsequent sections the Applicants have proposed nothing to remediate this anticompetitive outcome of their merger.

The purpose of this proposed transaction is to create significant long term public benefits by creating a truly neutral gateway in New Orleans through the establishment of an independent railroad entity that exists to provide equal access to all Class I railroads over the Back Belt and other terminal tracks described above and shown on Exhibit 1. Nondiscriminatory, equal access and use would be pursuant to uniform published terms and conditions, with recognition of the

requirement to prioritize the use of the subject tracks by Amtrak. The stated purpose would be accomplished by not only preserving existing competition between the Class I railroads but also enhancing the competitive situation post-merger.

NOTR's role as a neutral terminal railroad will also improve service and network fluidity in New Orleans through coordinated dispatching practices and capital investment as required and necessary. NOTR does not believe there are excess facilities that should be eliminated. On the contrary, NOTR believes there are opportunities to add track and facilities to increase the long-term benefits.

Section 1180.6(a)(1)(iv): Nature and amount of any new securities or other financial arrangements

This section is inapplicable to the transaction.

Section 1180.6(a)(2): Public Interest Justifications

a. Applicable Standards

Under 49 U.S.C. §11324(c), "the Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest." The Board generally applies a balancing test that applies the factors listed in §11324(b), as well as the rail transportation policy set forth in 49 U.S.C. §10101. 49 C.F.R. §1180.1(b). Additionally, "in determining the public interest, the Board must consider the various goals of effective competition, carrier safety and efficiency, adequate service for shippers, environmental safeguards, and fair working conditions for employees. The Board must ensure that any approved transaction would promote a competitive, efficient, and reliable national rail system." *Id.*

Under §11324(c), "[t]he Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access

to other facilities." In §1180.1(d), the Board has further clarified §11324(c), stating that "The Board will condition the approval of Class I combinations to mitigate or offset harm to the public interest . . . . The Board may impose conditions that are operationally feasible and produce net public benefits, but will not impose conditions that undermine or defeat beneficial transactions by creating unreasonable operating, financial, or other problems for the combined carrier."

This Responsive Application proposes a transaction that is consistent with §11324(c). NOTR's strong preference is for it to acquire ownership of the Back Belt. This divestiture is supported by §11324(c). First, the provision has consistently been interpreted to confirm that the Board's general conditioning authority is extremely broad.[4] The extreme breadth of the Board's conditioning authority covers divestiture of any tracks of the merger applicants. This is supported by the statutory language, which mentions divestiture of "parallel tracks" as a subset of the overall power to condition. This interpretation is further supported by precedent. In the UP/SP merger proceeding there were many requests for divestiture of significant portions of the merging carriers' systems, and the Board did not deny any of them on the basis that they were not limited to "parallel tracks."[5]

Divestiture of the Back Belt to NOTR would be the most efficient way to establish NOTR as the neutral operator of the New Orleans Terminal Area. Ownership of the track would

[4] *See* Finance Docket No. 33388, *CSX Corporation And CSX Transportation, Inc., Norfolk Southern Corporation And Norfolk Southern Railway Company— Control And Operating Leases/Agreements —Conrail Inc. And Consolidated Rail Corporation*, served July 20, 1998 at 277; and Finance Docket No. 34424, *Canadian National Railway Company and Grand Trunk Corporation — Control — Duluth, Missabe and Iron Range Railway Company, Bessemer and Lake Erie Railroad Company, and The Pittsburgh & Conneaut Dock Company*, served April 9, 2004 at 14.

[5] *Union Pacific Corp, Union Pacific R.R., & Missouri Pacific R.R. – Control & Merger – Southern Pacific Rail Corp., Southern Pacific Trans. Co., St. Louis Southwestern Ry., SPCSL Corp., & The Denver & Rio Grande Western R.R.*, Finance Docket No. 32760 (Decision No. 44, STB served Aug. 12, 1996), 1 S.T.B. 233, 261,283,288,289,297, and 300 (1996)("*UP/SP*").

clarify the operational and maintenance responsibilities and enable NOTR to make repairs and additions to the track as necessary to serve all railroads. However, if the Board determines that divestiture of the Back Belt is not desired or appropriate, then NOTR submits the Board should modify this condition to permit NOTR to acquire the Back Belt through a long-term lease of the Back Belt from NS.

b. NOTR's Transaction is in the Public Interest Because it Would Preserve and Enhance Competition

The proposed transaction is clearly in the public interest for numerous reasons. First and foremost, it would counter the consolidation of all the tracks and dispatching authority in the New Orleans Terminal Area into the merged UP and NS, which would reduce competition and adversely affect efficiency for non-UP/NS carriers. As stated above, the merger of UP and NS as proposed would put the Huey P. Long bridge dispatching,[6] the Back Belt, Oliver Yard, and Avondale Yard under one carrier for the first time.

As stated previously, post-merger, having acquired control of all the tracks in the New Orleans Terminal Area, the merged UP/NS railroad would have a strong incentive, and the physical ability, to favor moving its own traffic through the New Orleans gateway over the movement of trains by its remaining Class I competitors and Amtrak. The Revised Application is replete with statements of UP and NS about their plans to maximize single line service in their new combined system. *See, e.g.*, Revised Application, Vol. 1, pages 13, 19-20, 27, 34 and 38. Granting NOTR the authority sought by this Responsive Application would prevent the merged railroad from favoring its single line service to the detriment of all other railroads.

[6] UP/NS would actually control two river crossings in this region. UP dispatches the Huey P. Long Bridge. The only other rail crossing in the region is the Huey P. Long-O.K. Allen Bridge at Baton Rouge about 130 miles upriver. The Baton Rouge bridge is single track owned by UP and is used only by UP and CPKC (CPKC reaching it over UP-owned line).

The proposed transaction is also in the public interest because it would provide a long term means to enhance competition between all the Class I railroads in the New Orleans Terminal Area by providing them equal access over the Back Belt and other tracks. The need for major rail mergers to enhance competition as part of the merger proposal is a critical aspect of the Board's merger regulations. The Board's regulations are clear that a major merger application must contain specific and detailed information about how the merger applicants will not only preserve existing competition but also enhance it. Specifically, under 49 C.F.R. §1180.1(c):

> Although further consolidation of the few remaining Class I carriers could result in efficiency gains and improved service, the Board believes additional consolidation in the industry is also likely to result in a number of anticompetitive effects, such as loss of geographic competition, that are increasingly difficult to remedy directly or proportionately. Additional consolidations could also result in service disruptions during the system integration period. Accordingly, to assure a balance in favor of the public interest, merger applications should include provisions for enhanced competition . . .

While the Board declined the invitations of stakeholders to define the term "enhanced competition," it nevertheless took pains to set out in the regulations its expectations of the measures it expected applicants to consider and address when meeting this aspect of the rules. Primary among the measures was the enhancement of rail-to-rail competition. For example, the Board advised that:

> [c]ompetition can be enhanced in many ways. The focus of such a plan could be placed on enhancing intramodal (rail-to-rail) competition, for example, by the granting of trackage rights, the establishment of shared or joint access areas, the removal of "paper" and "steel" barriers, and other techniques that would enhance railroad-to-railroad competition.[7]

The Board further advised:

> [o]ur new rules reflect an intention on our part to offset, through conditions for competitive enhancements, those merger-related harms that cannot be directly or

[7] Docket No. Ex Parte 582 (Sub-No. 1) *Major Rail Consolidation Procedures* (served June 11, 2001). 5 S.T.B. 539, 544 (2001) ("*2001 Rules*")

> effectively mitigated. Such competitive enhancements could include, but would not be limited to, reciprocal switching arrangements, trackage rights, or elimination of 'paper barriers' on interchange by shortline carriers.

Id. Consequently, the Board stated that "provisions for competitive enhancement will be given substantial weight as merger benefits and are likely to be extremely important to us in determining whether to approve a particular application." *Id*. at 547.

In this first proceeding reviewed under the current merger rules, the merger applicants have not included measures that will enhance competition, particularly rail-to-rail competition, after the merger. The "Committed Gateway Pricing" ("CGP") regulatory condition proposed by the Applicants to purportedly alleviate such anti-competitive incentives and outcomes, is the only competitive "solution" offered by the Applicants in New Orleans and has been heavily criticized by numerous parties of record in this proceeding.[8] The criticisms include that CGP applies only to traffic interchanged with BNSF or CSX (App. Vol. 1 at 322), so CN and CPKC, both of which serve New Orleans, are left out. CGP would also end with the oversight period. *Id.* at 330-331. The Board has also called CGP into question, observing that it "appears to exclude a significant amount of traffic hauled or proposed to be hauled by Applicants, terminates with the conclusion of the Board's oversight period, and may harm some shippers by incentivizing UP/NS to compete less aggressively for some traffic." Decision No. 21 at 21,

[8] As just two of many examples, see BNSF Railway Company's ("BNSF") Motion to Summarily Deny Amended Railroad Control Application For Failure to Present a *Prima Facie* Case, August 6, 2026 at p. 5, "Specifically, UP/NS's sole claimed competitive enhancement, Committed Gateway Pricing ("CGP"), does not enhance competition at all. It creates no new routing options and covers less than 1% of all traffic. Worse, CGP actually harms many shippers by hardwiring above-market rates into the regulatory structure and cloaking UP/NS in immunity from rate regulation and antitrust enforcement"); and CPKC's August 6, 2026 letter to the STB's Chief of Case Administration at p. 13 ("Although Applicants attempt to rebrand CGP as creating "new haulage-like opportunities," it is nothing more than a rate-setting program,[and] it does not provide shippers with access to another rail carrier").

citing Revised Application, Vol. 2-256-57, Verified Statement of Mark Israel 76-77. CGP also does not address operations in New Orleans, and by design would only be a temporary regulatory solution that would not enhance competition between railroads in any event. *See* Crowley/Fapp V.S. at 11-12.

The other "open gateway" condition that the Applicants have proposed the Board adopt in this proceeding, the so-called CPKC open gateway merger condition, was adamantly opposed by both UP and NS in that proceeding. In any event, that condition would address rates, divisions, rate justification and interchange reporting (Revised App. Vol. 1 at 289-291). None of these commitments would change the fact that UP and NS would retain the authority to dispatch trains running through the New Orleans Terminal Area. Pursuant to the Revised Application, BNSF's interchange with UP would move from NS's Oliver Yard to UP's Avondale Yard (Revised App. Vol. 2 at 600, 750). NS's interchange with CN and CPKC will continue to occur at Oliver Yard, but the Applicants indicate they may shift some CN/CPKC interchanges to UP facilities via Baton Rouge. *Id.* at 751. For those carriers, that means their largest competitor would provide a reduced scope of service with no neutral party in between.

The purpose of NOTR's proposal is to remove that control from any carrier with trains in the queue, without taking away any operating benefit the Applicants claim at New Orleans. NOTR would replace two competing dispatchers with one neutral dispatcher on the shortest stretch of track that controls the gateway, and leave every carrier's line-haul business, routing and pricing alone.

c. The Transaction Should Reduce or Eliminate Service Disruptions

The proposed transaction also meets the public interest standard of §11324(c) because it would advance the Board's goals to avoid service disruptions that have been the inevitable result

of every major rail merger. In promulgating the current merger rules the Board proceeded from the assumption that service disruptions would be "a likely result" of any future proposed merger. Docket No. Ex Parte No. 582 (Sub-No. 1) *Major Rail Consolidation Procedures* (served June 11, 2001) at 20. The proposed transaction would further the Board's goal of anticipating and mitigating such service disruptions because it would create a neutral railroad whose sole purpose was to facilitate efficient, fluid service and dispatching of all railroads through the New Orleans Terminal Area.

d. The Transaction is Consistent with Other Terminal Arrangements

The establishment of NOTR as the neutral terminal railroad in New Orleans would be consistent with UP's and NS's operations in other regions. At St. Louis both carriers rely on TRRA's nondiscrimination obligations and offer to divest NS's TRRA stake; at Peoria they rely on a neutral operator bound to provide equal access. Revised App. Vol. 1 at 333-335. At New Orleans there is no comparable agreement, order or divestiture. The Back Belt is a wholly owned NS line with no equal-access obligation.

Additionally, the Board has treated neutral terminal operation as a means of preserving competition where a transaction would otherwise change control of terminal assets. In CSX and NS' joint acquisition of Consolidated Rail Corporation (Conrail) and the creation of neutral shared asset areas, the Board concluded that the shared switching areas expand competitive opportunities. NOTR proposes the same neutral operation here as a condition that is narrowly tailored to the competitive risk that the merger creates at New Orleans. *See* Crowley/Fapp VS at 12-13.

Finally, shared, open use of this corridor is not a new idea in New Orleans. When the Interstate Commerce Commission approved the New Orleans Union Passenger Terminal in

1948, it described the outer belt (today's Back Belt) and the Public Belt as the two principal belt lines connecting the railroads from the east with those from the west, and it approved a terminal open to the signatory railroads "and potentially any others that hereafter may serve New Orleans," on reasonable terms. *New Orleans Union Passenger Terminal Case*, 267 I.C.C. 760, 766, 771-772 (1948). NOTR applies that same open-use principle to the freight corridor that the merger would otherwise place under one carrier.

(i): Effect of the Proposed Transaction on Competition

The acquisition and operation of the Back Belt line by NOTR and the assignment of dispatching authority would preserve existing competition and greatly enhance it going forward through a structural solution that would establish neutral access to the New Orleans gateway tracks for all Class I railroads. As such it would not result in any lessening of competition, create a monopoly, or restrain any trade in freight surface transportation in any region of the United States. On the contrary, the transaction will preserve and enhance the ability of the Class I railroads to operate and compete in the New Orleans Terminal Area. *See* Crowley/Fapp VS at 11.

In fact, NOTR's proposal would address competitive and service issues in the New Orleans Terminal Area that the Revised Application does not account for. More specifically, the Applicants did not account for all trains that currently traverse the Back Belt, which resulted in a significant understatement of the potential adverse operational and competitive impacts on other railroads. As explained in more detail in the Crowley/Fapp V.S., NS currently operates its own trains over the Back Belt. In addition, three other Class I railroads, UP, BNSF and CSX, and Amtrak also operate trains over all or various portions of the Back Belt from the CN/IC Connection to Oliver Junction. However, the Applicants submitted a capacity analysis in the

Revised Application[9] that only counted UP and NS freight trains and Amtrak trains operating over the Back Belt. More specifically, the Revised Application developed pre-merger existing train counts through the New Orleans Terminal Area that produced {{ [redacted] }}, traversing the Back Belt in the Base Period.[10] The freight trains consist of a mix of {{ [redacted] }} The passenger trains consist of {{ [redacted] }}

The analysis does not include counts of the CSX and BNSF trains that also operate over this line. The presence of BNSF and CSX trains on the Back Belt was revealed in information provided by NS and CSX in STB Docket No. FD 36496, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(E) – CSX Transportation, Inc. and Norfolk Southern Corporation* ("*Amtrak Gulf Coast"*), which sought Board approval to recommence Amtrak service from New Orleans, LA to Mobile, AL. Specifically, CSX and NS's experts[13] identified 14 freight trains per day operating over the Back Belt, consisting of four trains per day that interchange directly with NS and ten additional trains per day that cross the NS line while moving between CSXT and other railroads.[14]

The Applicants did not identify any foreign trains operating over the Back Belt in their

[9] The Applicants relied upon Oliver Wyman to develop its capacity analysis using a combination of actual UP/NS traffic data and MultiRail.
[10] *See,* Crowley/FappVS at 4 and workpaper "Train Count Summary (Final).xlsx".
[11] *See*, {{ [redacted] "}}
[12] *Id.*
[13] *See*, HNTB Corporation and R.L. Banks & Associates, Inc., *2021 New Orleans – Mobile Gulf Coast Passenger Service RTC Modeling Rebuttal Report*, filed Dec. 23, 2021- (Rebuttal Report) at 36, Public Version.
[14] *See,* Rebuttal Report at 36.

development of the base period trains for the Revised Application's capacity analysis. But, NS' Revised Application *workpapers* identify {{ [redacted] }}, all operating in the Metairie Road to NE Tower segment of the Back Belt.[15] These trains were excluded from the Applicants capacity analysis. Had they been included in the pre-merger existing train counts, the capacity analysis, would have been based on {{ [redacted] }}

These higher train counts are consistent with the train counts over the Back Belt included in *Amtrak Gulf Coast*. The combined input and output data of {{ [redacted] }} freight trains per day is within {{ [redacted] }} per day of that count included in that proceeding.[16] By excluding these trains, Applicants understated the volume of traffic that the Back Belt carries today. The {{ [redacted] }} foreign trains per day identified in the Applicants' workpapers, which is approximately {{ [redacted] }} of the freight count the Applicants reported, operate on the Metairie Road to NE Tower segment, where the effect on utilization is greatest. A base period that omits them understates existing utilization of the line and overstates the capacity that remains available for the additional trains that the Applicants plan to add. Delays are generally understood to increase exponentially with volume, and as a route nears its capacity a delay is more likely to cause further delays and the line's ability to recover declines.[17] An understated starting volume therefore can

[15] *See,* Crowley/Fapp VS at 6

[16] On the passenger side, the Rebuttal Report describes two Crescent trains per day plus four Gulf Coast trains per day operating over the Back Belt, which equals the six daily Amtrak trains indicated by the Applicants. Additionally, both the Applicants capacity analysis and the data from Amtrak Gulf Coast indicate Amtrak Sunset Limited trains operating service 3 days per week.

[17] See Dingler, M., Koenig, A., Sogin, S., and Barkan, C.P.L., "Determining the Causes of Train Delay," *Proceedings of the 2010 AREMA Annual Conference*, University of Illinois at Urbana-Champaign, and Krier, Betty, Chia-Mei Liu, Brian McNamara, and Jerrod Sharpe,

understate the congestion the merger would produce.

The failure to include all of the foreign trains also matters for competitive access. Because the capacity analysis was built from UP, NS and Amtrak train plans only, it reserves no capacity for the trains of the other carriers that rely on the Back Belt for interchanges. After the merger, the carrier that dispatches the line would also be the carrier whose own trains benefit when those other trains are held. The Applicants have offered no plan or commitment showing how the trains they did not count would be treated. NOTR's proposal, by contrast, plans dispatching around the combined demands of every carrier that uses or interchanges at the Back Belt on a first come, first served basis.

In addition to the understated train counts moving over the Back Belt discussed above, there is other train activity that impacts the Back Belt operations and traffic moving over the Huey P. Long Bridge that is not addressed by the Revised Application. As noted in *Amtrak Gulf Coast* and in the Boaz V.S., the west end of the Back Belt line is a major junction with CN, KCS, NOPB, BNSF, CSXT and UP.[18] But because the Applicants' capacity analysis is built from UP, NS and Amtrak train plans only, the movements, holds and conflicts created by CN, CPKC, BNSF, CSXT and NOPB as they deliver and receive cars at the west end of the Back Belt are not accounted for in the capacity analysis. This results in a representation of the amount of available capacity on the Back Belt that does not exist in reality and could lead to delays/conflicts in real time when actually accounted for. The dispatching of the Back Belt by NOTR will be

"Individual freight effects, capacity utilization, and Amtrak service quality," *Transportation Research Part A: Policy and Practice*, Vol. 64, June 2014, pp. 163-175, p. 164.

[18] *See,* Rebuttal Report at 36, "Most of the traffic across all carriers in the terminal passes over the same NSR-owned and operated portion of the Gulf Coast Corridor over which the proposed passenger service will operate. The west end of the NSR track is a major junction with CN, KCS, NOPB, BNSF, CSXT, and UP." (KCS is now CPKC).

planned around the combined demands of *all* the interchanging Class I railroads and not limited to the approximately {{ [redacted] }} freight and passenger trains per day identified by the Applicants.

Finally, the Applicants' inclusion of only UP, NS, and Amtrak trains in the Revised Application is indicative of how UP and NS appear to view the New Orleans Gateway, which is solely through the eyes of the merged railroad planning to prioritize its trains and new single line traffic. Their decision to limit their analysis to this subset of all the applicable traffic traversing, or adjacent to, the Back Belt represents a fatal flaw in the post-merger operating plan and foreshadows the intent of the merged railroad to exercise market power in the New Orleans Terminal Area once it acquires physical control of the critical track assets. All of this reinforces the necessity for NOTR, a neutral third-party, to dispatch the New Orleans Terminal Area and account for all traffic and not just the traffic of UP/NS.

How the traffic moves in and around the New Orleans Terminal Area also defines the relevant market. The relevant product market for the Back Belt transaction is terminal access and interchange service over the Back Belt, which consists of the dispatching, interchange and run-through movements that the railroads serving New Orleans depend on to connect with one another and with local customers.[19] The relevant geographic market is the New Orleans Terminal Area. All the Class I railroads operate in the New Orleans Terminal Area along with NOPB and Amtrak. The majority of the traffic across all carriers in the terminal passes over the NS-owned and operated line of which the Back Belt is a part.[20] NOTR's proposal does not create a new

[19] *See,* 49 C.F.R. § 1180.6(a)(2)(i) (requiring in every application "a description of the relevant markets" and a discussion of whether the transaction would result in a lessening of competition, creation of a monopoly, or restraint of trade).

[20] *See,* Rebuttal Report at 36 (identifying UP, BNSF, CN, KCS, NOGC and NOPB as having operations in the New Orleans terminal and stating that "[m]ost of the traffic across all carriers in the terminal passes over the same NSR-owned and operated portion of the Gulf Coast Corridor"). Kansas City Southern Railway Company is now part of CPKC.

market or alter the boundaries of the existing market and instead preserves and enhances the existing competition in the current market, in contrast to the Applicant's proposal. The infrastructure, the customers, the connecting carriers and the routes are unchanged. Only the owner and dispatcher of the Back Belt changes: from NS to NOTR.

The traffic volumes discussed above for this Responsive Application define the market floor. Traffic volumes across or adjacent to the Back Belt from CN, CPKC and NOPB, and which have not been made part of the record by Applicants in this proceeding, reflect the market ceiling when combined with traffic data from the other Class I railroads and Amtrak. *See* Crowley/Fapp VS at 10.

The divestiture of the Back Belt to NOTR therefore preserves the existing market and removes the risk that the merger would create within it. Under NS ownership, the Back Belt is dispatched by one carrier whose interests in interchange are limited to its own traffic. After the merger, the same line would be dispatched by the combined UP-NS, which would control the access of every other railroad to the New Orleans Terminal Area. NOTR, by contrast, has no affiliation with any Class I railroad, and proposes to dispatch and operate the Back Belt on a neutral basis open to all of the Class I railroads. No point served by the Back Belt would move from three or two serving railroads to fewer, and concentration in the ownership of the switching function would fall instead of rise. The Board reached the same conclusion about neutral switching carriers in the Chicago terminal area in *CSX Corp. - Control - Conrail Inc.*, 3 S.T.B. 196, 292–293 (1998). There, it examined whether the transaction would change the concentration of ownership of the relevant switching carriers and held the applicants to their commitment that the carrier would remain neutral.[21] CLR proposes the same neutral operation

[21]*See, id,* (finding that the transaction would not significantly change the concentration of ownership of the relevant Chicago switching carriers, relying on applicants' representation that

here as a condition that is narrowly tailored to the competitive risk that the merger creates at New Orleans

(ii): Financial Considerations

The funds to acquire the Back Belt by purchase or lease and conduct the switching and dispatching duties contemplated by the transaction will be funded principally with equity from CLR and may also be funded in part with debt financing consistent with industry standards. NOTR will have its own financial resources, with access to additional capital through its affiliation with CLR. CLR's capital is privately held.

The price for the Back Belt (or lease rent, etc.) will be set by agreement with NS (or the merged UP/NS) or, if the parties cannot agree, by the Board. NOTR's start-up costs beyond the purchase price fall into three groups: the dispatch center including its systems, PTC host implementation with interface work at East Bridge Junction and CP Seabrook, and a baseline condition assessment of the track, bridges and signals followed by the work it identifies.

NOTR's revenue will come from one published tariff applied to every similarly situated carrier.[22] NOTR has offered not to change the current payment structure for Amtrak, to not only support growth of passenger service to and from New Orleans (Operating Plan Section 10) but to also help to continue its growth.

Once the financial terms of this proposed transaction are finalized, either purchase or lease, NOTR will publish tariff rates that ensure NOTR will realize a reasonable return on its investment and are in line with current commercially reasonable, market-based tariff rates for similar services in the industry. NOTR is willing to utilize the industry cost or capital as

the Indiana Harbor Belt would continue to be managed as a neutral switching carrier, and stating "We will hold applicants to that representation").

[22] *See*, Boaz V.S. at 13.

published by the Board in its return-on-investment calculations.

(iii): Effect of Increase of Total Fixed Charges Resulting from the Proposed Transaction

The proposed transaction will not increase the fixed charges of NS, UP or the merged carrier. No debt of NS, UP or the merged carrier will be assumed or created as a result of the transaction. NOTR is a newly formed entity with no existing fixed charges. Any debt NOTR incurs in connection with the transaction will be in commercially reasonable amounts and on commercially reasonable terms and will not impair NOTR's ability to meet its obligations or to continue providing neutral dispatching and service over the lines described in this Responsive Application.

(iv): Effect of the Proposed Transaction upon the Adequacy of Transportation Services to the Public

The proposed transaction will greatly improve and enhance freight and passenger transportation services to the public by installing a neutral terminal operator whose purpose is to facilitate the efficient, non-discriminatory movement of trains through the New Orleans Terminal Area. Moreover, as an independent operator with responsibility to maintain the infrastructure, NOTR will have the incentives and commitment to make investments in the tracks to ensure the long-term adequacy of transportation services.

(v): Effect of the Proposed Transaction on Applicant's Employees

NOTR is currently, and will be, staffed by experienced operating railroad personnel with direct, deep experience in freight and passenger railroad operations generally, and in the New Orleans Terminal area specifically. The transaction will result in the hiring of additional railroad employees. The relevant time frame will be the timeline for implementing the required phases of the overall transaction. NOTR will create new positions in the New Orleans Terminal Area in

dispatching, field management, maintenance of way and signals, and, once established, its emergency crew base. Before recruiting externally, NOTR will give strong consideration to qualified, affected regional railroad employees in good standing, including dispatchers and maintenance-of-way and signal employees. NOTR's train and engine employees will be represented. NOTR has not yet reached any employee protection agreements, and it will comply with whatever employee protective conditions the Board imposes.

(vi): Effect of the inclusion in the Proposed Transaction of Other Railroads

This section is inapplicable because the proposed transaction involves an acquisition by NOTR that would not exclude any railroads from operating in the New Orleans Terminal Area, and it is limited in scope, covering only 16.4 miles.

Section 1180.6(a)(3): Other Supporting Material

Not applicable

Section 1180.6(a)(4): Opinion of Counsel

In the opinion of the undersigned counsel for NOTR, the transaction meets the requirements of the law and will be legally authorized and valid, if approved by the Board.

Section 1180.6(a)(5): States Where Applicants Own Property

NOTR does not yet own property in any States.

Section 1180.6(a)(6): Maps – Exhibit 1

Attached

Section 1180.6(a)(7): Explanation of the Transaction

Section 1180.6(a)(7)(i) – Nature of the Transaction

The proposed transaction would ideally entail the divestiture of the Back Belt line from NS to NOTR, and the corresponding grant of common carrier operating authority over the Back

Belt to NOTR. As stated previously, however, if the Board deems divestiture to be inappropriate NOTR seeks the alternative relief of acquiring the Back Belt via a long-term lease. The proposed transaction would also entail the Board directing UP and NS to transfer all dispatching authority they possess over the Back Belt and the other tracks described in this Responsive Application. NOTR would acquire the Back Belt through payment to NS of a purchase price (or lease arrangement) negotiated in good faith or, if the parties cannot agree, through a price or lease terms established by the Board.

Section 1180.6(a)(7)(ii): Agreements and Protocols – Exhibit 2

Attached in Exhibit 2 is a proposed purchase and sale agreement by which NOTR would acquire ownership of the Back Belt. NOTR has also attached a draft Land and Rail Assets Lease Agreement. NOTR will develop draft dispatching protocols adapted from the BNSF Railway TDCOM effective October 1, 2024 that would be utilized by it to dispatch the tracks covered by this Responsive Application. The final dispatching protocols would be developed in coordination with the railroads utilizing the New Orleans Terminal Area tracks.

Section 1180.6(a)(7)(iii): Information Regarding the Consolidated Entity

Not applicable

Section 1180.6(a)(7)(iv): Court Order

Not applicable

Section 1180.6(a)(7)(v): Property Involved in the Proposed Transaction

The property involved in the transaction is described in 1180.6(a)(1)(i) above. The track sought by this Responsive Application would be the only property owned by NOTR, if the Board approves divestiture of the Back Belt. If not, NOTR would lease the properties described above in Section 1180.6(a)(1)(i).

Section 1180.6(a)(7)(vi): Principal Routes, Termini, Points of Interchange, and Amount of Mileage Involved

The tracks, routing and mileage are all described in the discussion provided under 1180.6(a)(1)(i) of this Responsive Application and illustrated in Exhibit 1.

Section 1180.6(a)(7)(vii): Government Financial Assistance

No governmental financial assistance is currently involved in the proposed transaction. However, NOTR adds that unlike NS and UP, it has the ability to obtain federal assistance from grant programs and tax credits available to Class III short line railroads for funds to rehabilitate and expand the track infrastructure in the New Orleans Terminal Area.

Section 1180.6(a)(8): Environmental Data

This subsection is not applicable because the transaction is categorically excluded from environmental review. Specifically, the transaction is not expected to result in any of the thresholds in 49 C.F.R. §1105.7(e) being exceeded. NOTR previously corresponded with the Board's Office of Environmental Analysis regarding this topic via a letter from undersigned counsel to OEA dated September 29, 2026.

Section 1180.8(c): For *minor* transactions: Operating plan-minor (Exhibit 15).

A proposed Operating Plan is attached as Exhibit 15. As explained in prior sections, NOTR does not anticipate any significant changes in patterns or types of service currently being provided over the tracks at issue. The merged carrier would have operating rights over the Back Belt on the same published terms as every other user. NOTR would not disturb any existing carrier's right to serve shippers, and there are few, if any, shippers located along the Back Belt. Those shippers could continue to receive service by the new UP/NS railroad or by a third-party contractor. NOTR does not believe the Board should consider the proposed expansion of access

to the Back Belt to additional Class I rail carriers as a "significant change[] in patterns or types of service," but this feature of the transaction is nevertheless discussed in detail in previous sections and in the Operating Plan.

In regard to items (1) – (4) in 1180.8(c): These items are referenced in Section 1.4 of the Operating plan, including (1) Traffic levels, which have also been discussed in previous sections; (2) Impacts on passenger services; (3) Operating economies, of which there are none; and (4) Anticipated discontinuances or abandonments.

Chart Summarizing Key Aspects of Operating Plan

Segment	Limits	Owner	Dispatcher today	NOTR role
A. Huey P. Long Bridge	West Bridge Jct to East Bridge Jct	NOPB (unchanged)	UP	Dispatch only
B. CN segment	East Bridge Jct to CN/IC Connection, performing the same functions UP does today across the two CN interlockers	CN (unchanged)	UP	Dispatch only
C. Back Belt	CN/IC Connection (MP 0.0 A) to East City Jct (MP 3.6 A), and East City Jct (MP 3.8 NT) to Oliver Jct (MP 7.9 NT), about 7.7 miles	NS today; NOTR after closing	NS	Own, maintain and dispatch
D. NO&NE segment	Oliver Jct (MP NO 194.1) to CP Seabrook (MP NO 190.6), about 3.5 miles	NS (unchanged)	NS	Dispatch only
E. UP Avondale Sub	BNSF Connection (MP 14.9) to West Bridge Jct (MP 10.5), 4.4 miles	UP (unchanged)	UP (unchanged)	Trackage rights for NOTR crews

Section 1180.4(c)(2)(i): Signatures, Oaths, and Certifications

All of the required documents are attached to this Responsive Application.

Respectfully submitted,

/ss/ Thomas W. Wilcox
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Washington D.C. 20006
(202) 508-1065
tom@twilcoxlaw.com

Counsel New Orleans Terminal Railroad LLC

November 17, 2026

Signatures, Oaths, and Certifications of Applicant's Executive Officer
[Section 1180.4(c)(2)(i)]

I, Bryan Boaz, declare under penalty of perjury that I am the President of New Orleans Terminal Railroad, LLC ("NOTR"), and I am authorized to sign, to verify, and to file this Responsive Application on behalf of NOTR, that I have knowledge of the matters contained in this Responsive Application, and that the statements made in this Responsive Application are true and correct to the best of my knowledge and belief.



Bryan Boaz

Dated this 16 of November, 2026.

I, Benjamin Bossow, certify that I am corporate secretary of New Orleans Terminal Railroad ("NOTR"), and that Bryan Boaz, President of NOTR is duly authorized to verify and file this Responsive Application on behalf of NOTR.

Corporate Secretary
New Orleans Terminal Railroad, LLC

Dated this 17 day of November, 2026

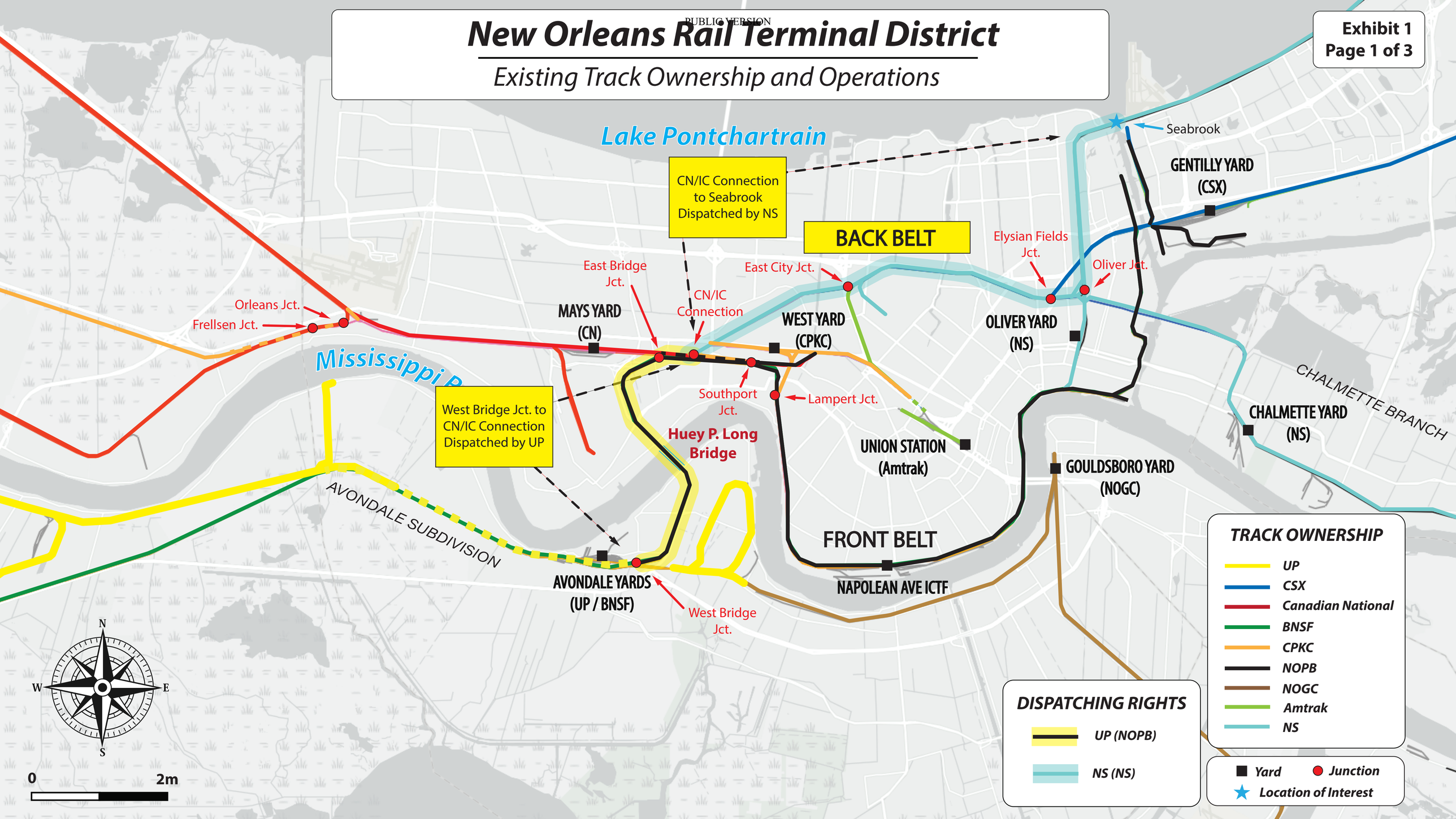
EXHIBIT 1

(MAPS)

PUBLIC VERSION

New Orleans Rail Terminal District

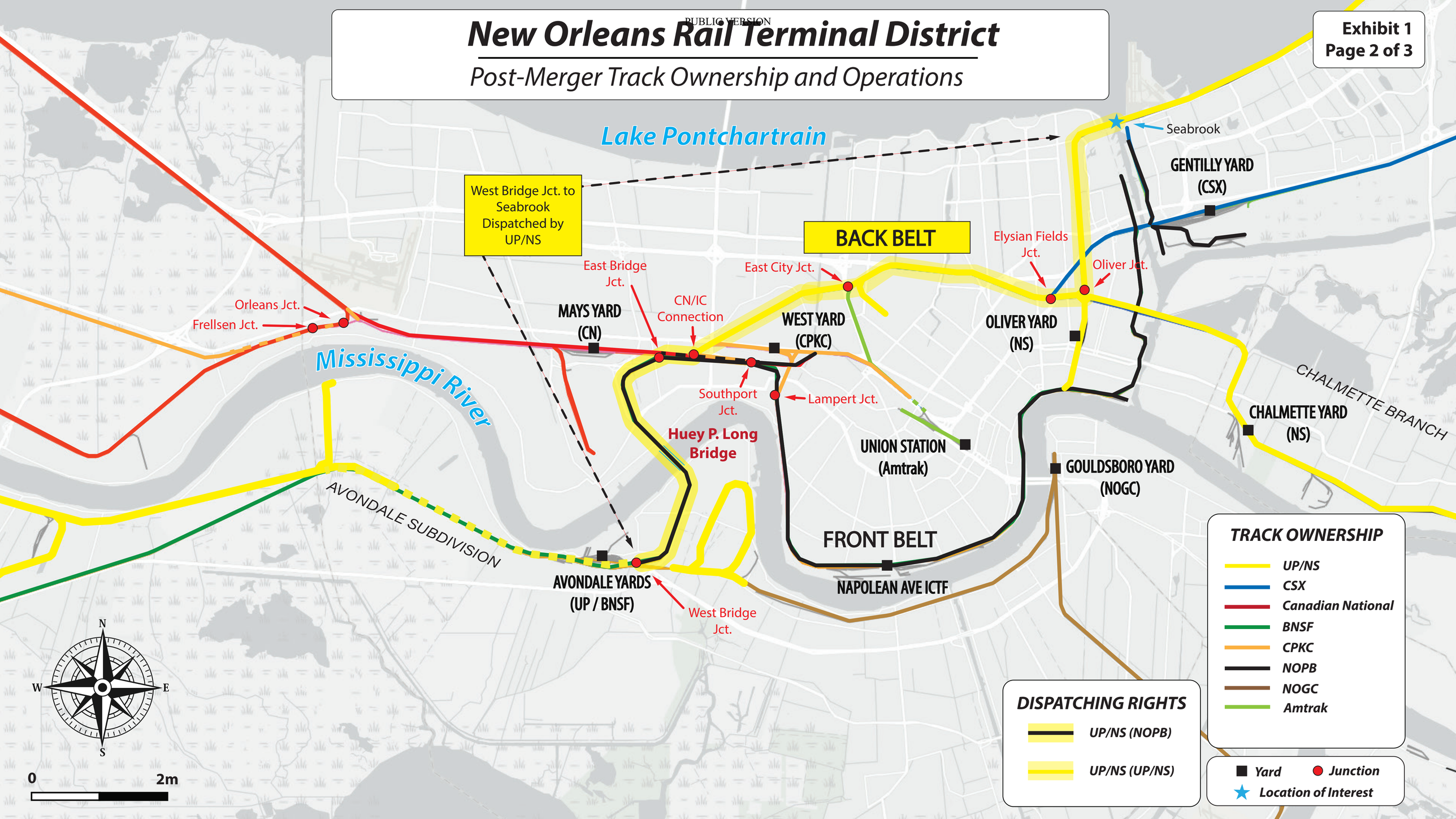
Existing Track Ownership and Operations



PUBLIC VERSION

New Orleans Rail Terminal District

Post-Merger Track Ownership and Operations



New Orleans Rail Terminal District

Post-Merger Track Ownership and Operations - CLR/NOTR Proposal

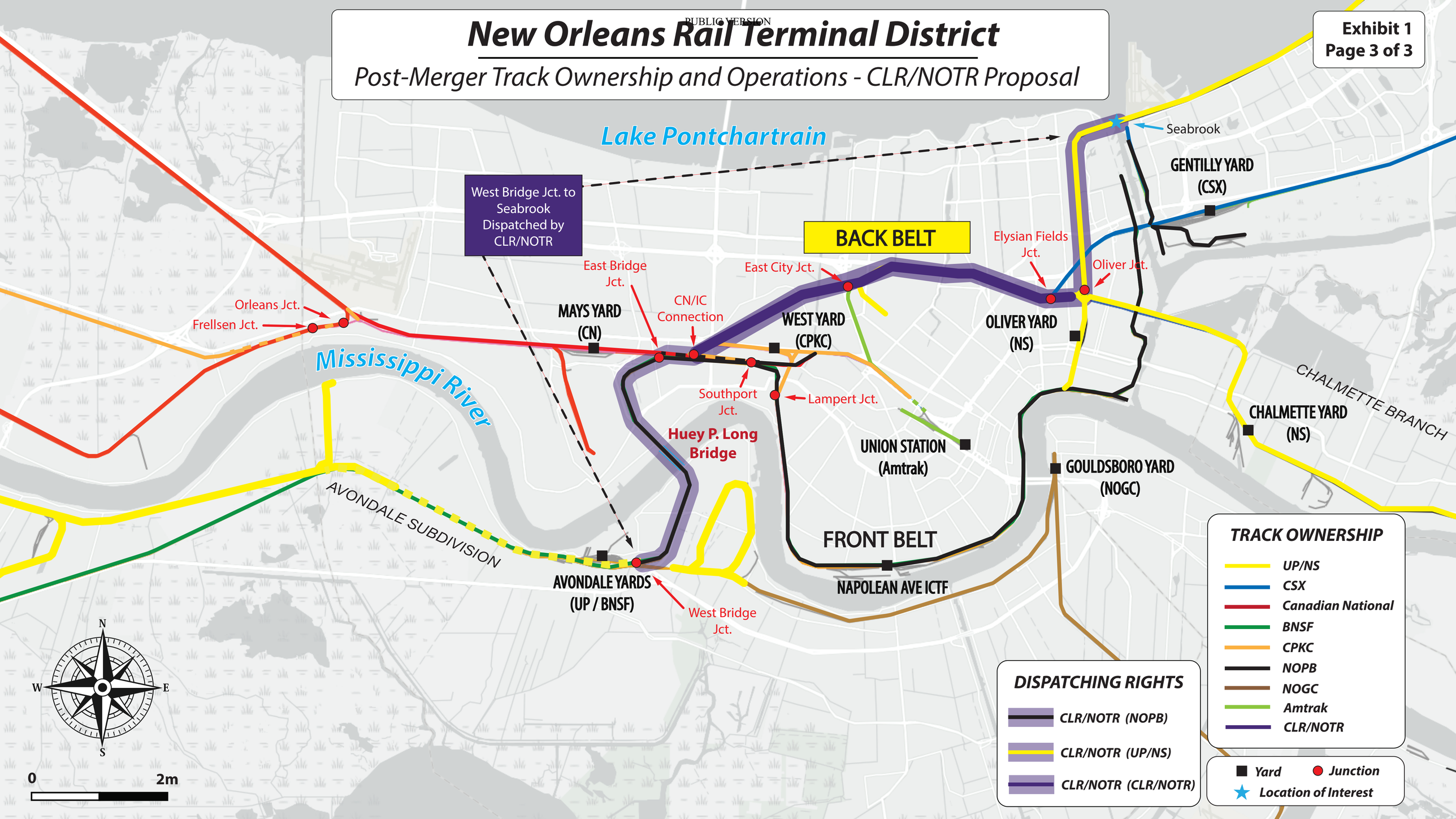


EXHIBIT 2

(AGREEMENTS)

ASSET PURCHASE AGREEMENT

By and Between

NORFOLK SOUTHERN RAILWAY COMPANY

and

NEW ORLEANS TERMINAL RAILROAD, LLC

Dated as of [●], 2027

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of [●], 2027, is entered into by and between Norfolk Southern Railway Company, a Delaware corporation ("NS" or "Seller") and New Orleans Terminal Railroad, LLC, a Louisiana limited liability company ("Purchaser"). Seller and Purchaser are referred to herein individually as a "Party" and collectively as the "Parties."

W I T N E S S E T H:

WHEREAS, Seller owns, operates and has certain right, title and interest in and to a line of railroad extending westward from Oliver Junction, milepost 7.9 NT in New Orleans, LA, to East City Junction at milepost 3.8 NT, and further from East City Junction at milepost 3.6 A to CN/IC Connection, milepost 0.0 A, a distance of approximately 7.7 miles and certain related assets shown on Exhibit A (collectively, and as defined more fully below, the "Subject Line");

WHEREAS, Purchaser desires to acquire the Subject Line and is willing to assume certain liabilities, in each case as set forth hereinafter, and Seller is willing to sell, convey and assign the same, all on the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, for and in consideration of the foregoing, the representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I.
DEFINITIONS

Section 1.01. Definitions.

The following terms shall have the respective meanings set forth below throughout this Agreement:

"Accounts Receivable" means the accounts receivable, billed and unbilled, of Seller.

"Adjustment Amount" shall have the meaning set forth in Section 4.02(b).

"Adjustment Statement" shall have the meaning set forth in Section 4.02(b).

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Agreement" shall have the meaning set forth in the Preamble hereto.

"Allocation Schedule" shall have the meaning set forth in Section 7.04(d).

"Asset Taxes" means ad valorem, property, excise, sales, use, public utility and similar Taxes based upon the acquisition, operation or ownership of the Purchased Assets, but excluding, for the avoidance of doubt, Income Taxes and Transfer Taxes.

"Assigned Contracts" shall have the meaning set forth in Section 2.01(c).

"Assignment and Assumption Agreement" shall have the meaning set forth in Section 4.03(e).

"Assumed Liabilities" shall have the meaning set forth in Section 3.01.

"Base Purchase Price" shall have the meaning set forth in Section 4.02(a)

"Bill of Sale" shall have the meaning set forth in Section 4.03(a).

"Business Day" means any day other than a Saturday, Sunday or a day on which the banks in New York, NY are authorized or obligated by Law or executive order to close.

"Cap" shall have the meaning set forth in Section 10.02(c).

"Claim Notice" shall have the meaning set forth in Section 10.02(d).

"Closing" shall have the meaning set forth in Section 4.01.

"Closing Date" shall have the meaning set forth in Section 4.01.

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidential Information" shall have the meaning set forth in Section 7.08(e).

"Data Room" means the "[●]" virtual data room relating to the transactions contemplated by this Agreement hosted by [●].

"Deed" shall have the meaning set forth in Section 4.03(d).

"Disclosing Party" shall have the meaning set forth in Section 7.08(c).

"Disclosure Schedules" shall have the meaning set forth in ARTICLE V.

"Electronic Delivery" shall have the meaning set forth in Section 11.08.

"Encumbrance" means any mortgage, lien, encumbrance, charge, option, right of first refusal or first offer, security interest, pledge, right of way, easement or encroachment.

"Environmental Laws" means any and all Laws that have as their principal purpose the protection, preservation, investigation, remediation, or restoration of, or prevention of harm or damage to, natural resources or the environment, or (to the extent addressing human exposure to Hazardous Substances) occupational or human health and safety, including the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; the Hazardous Materials Transportation Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Toxic Substances Control Act; the Clean Water Act; the Clean Air Act; and the Oil Pollution Act.

"Environmental Liabilities" means any Liability that arises under or relates to Environmental Laws or a Hazardous Substance, including for property damage, personal injury or death caused by an actual or alleged Release, or exposure to, a Hazardous Substance at any location whatsoever including a location at which Hazardous Substances have been disposed, for Remedial Action, and for any violation of Environmental Law.

"Excluded Assets" shall have the meaning set forth in Section 2.02.

"Excluded Contracts" shall have the meaning set forth in Section 2.02(g).

"Excluded Liabilities" shall have the meaning set forth in Section 3.02.

"FCC" means the Federal Communications Commission.

"FCC Approval" means authorization fromthe FCC pursuant to 49 U.S.C. § 310(d) for the assignment of all radio frequency licenses currently held by Seller related to the Purchased Assets.

"FCC Licenses" shall have the meaning set forth in Section 2.01(j).

"Final Determination" shall have the meaning set forth in Section 10.02(e).

"FRA" shall have the meaning set forth in Section 7.05(c).

"Fraud" means actual and intentional fraud or misrepresentation made by a Party with respect to the specific representations and warranties of such Party expressly set forth in this Agreement with the knowledge that such representation and warranty was false when made, that such Party had the intent to induce the other Party to act or refrain from acting in making such representation and warranty, that such other Party acted in reliance on such misrepresentation or false representation and warranty, and as a result such other Party suffers harm.

"Fundamental Representations" shall have the meaning set forth in Section 10.01.

"GAAP" means generally accepted accounting principles in the United States as in effect from time to time, as consistently applied.

"Governmental Authority" means any government or political subdivision, whether federal, state, local, foreign or supranational, or any agency, authority, official or instrumentality of any such government or political subdivision, or any federal, state, local, foreign or supranational court, tribunal or arbitrator.

"Governmental Order" means any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any Governmental Authority.

"Hazardous Substance" means any pollutant or contaminant or any toxic, radioactive or otherwise hazardous substance, waste or material, including petroleum, as such terms are defined in, identified pursuant to, or give rise to Liability under any Environmental Law, per- and polyfluoroalkyl substances, and any substance that would reasonably be expected to have an adverse impact on human health or property.

"Income Taxes" means (a) all Taxes based upon, measured by, or calculated with respect to gross or net income, gross or net receipts or profits (including franchise Taxes and any capital gains, alternative minimum, and net worth Taxes, but excluding ad valorem, property, excise, severance, production, sales, use, real or personal property transfer or other similar Taxes), (b) Taxes based upon, measured by, or calculated with respect to multiple bases (including corporate franchise, doing business or occupation Taxes) if one or more of the bases upon which such Tax may be based, measured by, or calculated with respect to is included in clause (a) above, or (c) withholding Taxes measured with reference to or as a substitute for any Tax included in clauses (a) or (b) above.

"Indemnified Party" shall have the meaning set forth in Section 10.02(d).

"Indemnitor" shall have the meaning set forth in Section 10.02(d).

"Intellectual Property" means all rights in intellectual property of any type throughout the world, including (a) patents, patent applications and statutory invention registrations, including continuations, continuations-in-part, divisionals, provisionals, reexaminations, reissues and extensions; (b) name and source identifiers; (c) copyrights, whether registered or unregistered, database rights, and registrations and applications for registration thereof; and (d) trade secrets.

"IRS" means the Internal Revenue Service.

"Knowledge" or any other similar knowledge qualification, shall mean the actual or constructive knowledge of an individual, assuming due inquiry. For purposes of this Agreement, Knowledge of Seller and Knowledge of Purchaser shall, respectively, be limited to the actual knowledge of those persons listed under such Party's name on Section 1.01 of the Disclosure Schedules.

"Law" means any law, statute, code, ordinance, regulation or Governmental Order or other legally enforceable requirement of any Governmental Authority.

"Liability" means any liability, debt, guarantee, assurance, commitmen tclaim, deficiency, or obligation, whether known or unknown, fixed, absolute or contingent, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, asserted or unasserted, due or to become due, whenever or however arising (including whether arising by operation of Law, or out of any contract, or of any tort based on negligence or strict liability, or otherwise based on strict liability) and whether or not the same would be required to be stated in financial statements or disclosed in the notes thereto.

"Losses" shall have the meaning set forth in Section 10.02(a).

"Material Adverse Effect" means any event, change, development, circumstanceor effect that is materially adverse to (x) the value of the Purchased Assets or the amount of the Assumed Liabilities, taken as a whole, or (y) the ability of Seller to consummate the transactions contemplated by this Agreement; *provided* that noneof the following shall be deemed to constitute, and none of the following shall be, either alone or in combination, taken into account in determining whether there has been, a Material Adverse Effect: (a) any adverse event, change, development, circumstance or effect (whether short-term or long-term) arising from or relating to (i) general business, industry or economic conditions, (ii) national or international political or social conditions, including the engagement by the United States or any other country in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of

any military or terrorist attack, any conditions resulting from natural or manmade disasters or other acts of God or weather conditions, flood, epidemics, pandemics or other similar outbreaks or health crises or other force majeure events, (iii) changes in financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index), (iv) changes in GAAP or other applicable accounting rules or standards, (v) changes in Laws or the entry, revision or reversal of any Governmental Order, (vi) the taking of any action required by this Agreement or any of the other Transaction Documents,
(vii) the announcement, pendency or completion of the transactions contemplated by this Agreement or any of the other Transaction Documents or the identity of Purchaser, including Losses or threatened Losses of employees, customers, suppliers, distributors or others having relationships with Seller or any of its Affiliates or with the Purchased Assets, or (viii) the terms or availability of Purchaser's financing with respect to the transactions contemplated by the Transaction Documents; (b) any failure to meet a forecast (whether internal or published) of revenue, earnings, cash flow, or other data for any period or any change in such a forecast; *provided* that this clause (b) shall not prevent a determination that any event, change, development, circumstance or effect (whether short-term or long-term), not otherwise excluded from this definition of Material Adverse Effect, that results in such failure to meet projections or forecasts has resulted in a Material Adverse Effect; (c) matters disclosed or referred to in the Disclosure Schedules; (d) any event, change, development, circumstance or effect (whether short-term or long-term) with respect to which Purchaser has Knowledge on the date hereof; or (e) any actions taken or omitted to be taken by or at the request or with the consent of Purchaser or any of its Affiliates.

"National Priorities List" means the list of sites of national priority under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq., among the known Releases or threatened Releases of Hazardous Substances, pollutants, or contaminants throughout the United States.

"Party" shall have the meaning set forth in the Preamble hereto.

"PCBs" shall have the meaning set forth in Section 5.09(i).

"Permits" means all governmental licenses, permits or other governmental authorizations related to the Purchased Assets.

"Permitted Encumbrances" means (a) all existing agreements, encroachments, claims, easements, servitudes, occupancies, grants, reservations, deed obligations and similar covenants, rights, title defects and other impediments, whether or not recorded and whether or not this Agreement provides actual notice thereof, by operation of Law or otherwise, (b) all existing telecommunications facilities, public and private utilities, pipe and wire crossings, reservations, exceptions and restrictions whether or not of record, (c) legally applicable building, zoning, subdivision and other federal, state, provincial, county, municipal or local Laws, ordinances and regulations, (d) property Taxes and assessments, both general and special, which may become due or payable on or after the Closing Date which relate to all periods from and after the Closing, (e) any and all encroachments which might be revealed by a survey meeting applicable state or provincial minimum technical requirements and (f) any and all existing ways and servitudes, and rights of way, howsoever created, for roads, streets and highways.

"Person" means any individual, corporation, partnership, firm, joint venture, association, limited liability company, limited liability partnership, joint-stock company, trust, joint venture, unincorporated organization, governmental, judicial or regulatory body, business unit, division or any other business entity, organization or Governmental Authority.

"Pre-Closing Tax Period" means any taxable period (or portion of any Straddle Period) ending on or before the Closing Date.

"Prior Environmental Liabilities" shall have the meaning set forth in Section 3.02(b).

"Proceeding" means any claim, charge, action, arbitration, audit, investigation, hearing, litigation or suit (whether civil, criminal, administrative or judicial) commenced, brought, conducted or heard by or before any Governmental Authority.

"PTC" shall have the meaning set forth in Section 7.05(c).

"Purchase Price" shall have the meaning set forth in Section 4.02(a).

"Purchased Assets" shall have the meaning set forth in Section 2.01.

"Purchaser" shall have the meaning set forth in the Preamble hereto.

"Purchaser Indemnified Parties" shall have the meaning set forth in Section 10.02(a).

"Release" means any spill, seepage, discharge, leak, migration, emission, escape, injection, pouring, pumping, emptying, dumping, disposal or other release of any Hazardous Substances into the indoor or outdoor environment.

"Remedial Action" means any investigation, remediation, clean-up, abatement, removal or monitoring (or words of similar import) of Hazardous Substances.

"Representative" means any director, officer, member, owner, partner, employee, agent or advisor (including attorneys, accountants, consultants, bankers and financial advisors) of a Party.

"Required Consent Contract" shall have the meaning set forth in Section 2.03(a).

have the meaning set forth in the Preamble hereto.

"Seller Indemnified Parties" shall have the meaning set forth in Section 10.02(b).

"Seller Marks" shall have the meaning set forth in Section 7.09.

"Seller Taxes" means, without duplication, (a) any and all Income Taxes imposed on Seller, any of its direct or indirect owners or Affiliates, or any combined, unitary, or consolidated group of which any of the foregoing is or was a member, (b) Taxes attributable to the Purchased Assets for any Pre-Closing Tax Period, (c) Transfer Taxes that Seller is obligated to pay as set forth in Section 7.04(a), (d) Asset Taxes that Seller is obligated to pay as set forth in Section 7.04(b), (e) any and all Taxes resulting from a breach by Seller of any covenant relating to Taxes and (f) any Taxes imposed on or with respect to the ownership or operation of the Excluded Assets or that are attributable to any asset or business of Seller that is not part of the Purchased Assets; *provided, however*, that no such Tax shall constitute a Seller Tax (i) if Purchaser is liable therefor under Section 7.04 or (ii) to the extent that the amount of such Tax was included as an adjustment to the Purchase Price under Section 4.02.

"STB" means the U.S. Surface Transportation Board.

"STB Approvals" shall mean, collectively, (a) approval pursuant to 49 U.S.C. § 11323 *et seq*. of the application in Finance Docket No. 36873 for UP to acquire control of NS (and each of the related applications in Finance Docket No. 36873 (Sub-Nos. [●])); and (b) approval or exemption pursuant to 49 U.S.C. § 11323 *et seq.* and/or 49 U.S.C. § 10901(as applicable) of the transactions contemplated by this Agreement, and (c) approval or exemption of any related actions requiring STB authority, in each case by final order of the STB which shall have become effective and otherwise be in full force and effect.

"Straddle Period" means any taxable period that includes but does not end on the Closing Date. Where necessary to allocate Taxes under this Agreement with respect to a Straddle Period (a) property, ad valorem, intangible, and other periodic Taxes allocable to the Pre-Closing Tax Period shall be equal to the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days during the Straddle Period that are in the Pre-Closing Tax Period and the denominator of which is the number of calendar days in the entire Straddle Period; and (b) Taxes (other than Taxes allocable under clause (a) of this definition) allocable to the Pre-Closing Tax Period shall be computed on the basis of a "closing of the books," as if such taxable period ended as of the end of the day on the Closing Date; *provided* that exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions) shall be allocated between the period ending on the Closing Date and the period beginning after the Closing Date in proportion to the number of calendar days in each period.

"Subject Line" shall mean the lines of railroad described in the Recitals, and shall include, with respect to such lines, all tracks, rails, ties, ballast, spikes, tie plates, fastenings, rail anchors, track materials, connections, switches and frogs, shared diamonds, wyes, crossings, bridges, culverts, signals, crossing warning devices, and other rail-related fixtures and improvements, supporting structures and other infrastructure, including all buildings, improvements, shops, on-duty points, yards, terminals, parking and storage areas, adjoining siding, industrial, ancillary and yard track property located on the Transferred Real Property.

"Tax" or "Taxes" (a) all taxes, assessments, duties, levies, imposts or other similar charges in the nature of a tax imposed by a Governmental Authority (whether payable directly or by withholding and whether or not requiring the filing of a Tax Return), including all income, profits, gross receipts, license, payroll, employment, excise, fuel, environmental, severance, stamp, occupation, premium, customs duties, license, withholding, social security, unemployment, disability, ad valorem, real property, personal property, sales, use, lease, transfer, registration, value added, alternative or add-on minimum, estimated, and withholding (including backup withholding) or other similar taxes (together with any and all interest, penalties and additions to tax imposed with respect thereto), (b) including any Liability for payment of any amounts of the type described in clause (a) as a result of being a member of any affiliated, consolidated, combined or unitary group or required to be included in any Tax Return relating to such group prior to the Closing Date by reason of Treasury Regulations Section 1.1502-6(a) or any similar foreign, state or local Law, and (c) any Liability for the payment of any amounts of the type described in clause (a) or (b) as a result of the operation of Law or any express or implied obligation to indemnify any other Person.

"Tax Returns" means any and all returns, declarations, claims for refund, or information returns or statements, reports and forms relating to Taxes filed with any governmental Tax authority (including any schedule or attachment thereto) with respect to the Purchased Assets, including any amendment thereof.

"Third Party" means any Person not a Party to this Agreement.

"Third Party Claim" shall have the meaning set forth in Section 10.02(f).

"Threshold Amount" shall have the meaning set forth in Section 10.02(c).

"Transaction Documents" means this Agreement, the Bill of Sale, the Deed, the Assignment and Assumption Agreement, the Transition Services Agreement and each certificate or instrument to be executed and delivered by any Party in connection with or pursuant to this Agreement.

"Transfer Taxes" shall have the meaning set forth in Section 7.04(a).

"Transferred Real Property" shall have the meaning set forth in Section 2.01(b).

"Transition Services Agreement" shall have the meaning set forth in Section 4.03(c).

ARTICLE II.
PURCHASE AND SALE OF ASSETS

Section 2.01. Purchase and Sale of the Purchased Assets.

On the terms and subject to the conditions set forth in this Agreement, Seller hereby agrees to sell, assign (but only to the extent assignable), transfer, convey and deliver to Purchaser, and Purchaser hereby agrees to purchase, acquire, and accept from Seller on the Closing Date, all of Seller's right, title and interest in, to and under the following assets (collectively, the "Purchased Assets"), to the extent that such assets exist as of the Closing, in all cases excepting the Excluded Assets:

(a) the Subject Line;

(b) the real property as described in Section 2.01(b) of the Disclosure Schedules attached hereto, together with (and subject to) all easements, rights-of-way and other rights and interests appurtenant thereto (collectively, the "Transferred Real Property");

(c) those certain agreements, leases and contracts of Seller that relate to the ownership and operation of the Subject Line and are listed in Section 2.01(c) of the Disclosure Schedules (the "Assigned Contracts");

(d) all Permits, in each case to the extent transferable by Seller;

(e) all keys, entry devices and passcodes with respect to the Purchased Assets including combinations to any locks or vaults (if any) in Seller's possession;

(f) the radio license authorizations currently held by Seller with respect to the Purchased Assets, as set forth on Section 2.01(j) of the Seller Disclosure Schedule (the "FCC Licenses"); and

(g) copies of the books and records relating to the ownership and operation of the Purchased Assets by Seller, including those records provided in the Data Room (but excluding (i) all Tax Returns and related books and records, (ii) any records prepared by Seller in connection with the transactions contemplated by this Agreement, (iii) Seller's corporate charter, seal, minute books, stock record books, and other similar documents relating to the organization, maintenance and existence of Seller, (iv) any records that are the subject to the work product or other similar privilege or protection and (v) any transportation or customer agreements that are Excluded Contracts).

Section 2.02. Excluded Assets.

Other than the Purchased Assets, all of Seller's assets, properties, rights and contracts of every description, real, personal, mixed, tangible and intangible, wherever situated

(collectively, the "Excluded Assets") will remain the property of Seller after the Closing. The Excluded Assets include the following assets of Seller:

(a) all cash, cash equivalents and marketable securities;

(b) all Accounts Receivable (including rights to rebates, refunds, and similar items) of Seller;

(c) all tangible personal property other than the Subject Line, including all raw materials, work-in-process and other inventory, radios, locomotives, rolling stock and vehicles, maintenance-of-way equipment, and hand tools;all Intellectual Property owned by Seller together with the right to sue and collect for past infringement thereof, and all radio licenses or frequencies owned or operated by Seller;

(d) subject to Section 2.03 below, any Required Consent Contracts for which an effective consent or approval permitting the assignment of such contract(s) has not been obtained prior to the Closing Date;

(e) all claims, rights and causes of action relating to or arising from (i) any of the Excluded Assets or the Excluded Liabilities, and (ii) the ownership and operation of the Purchased Assets prior to the Closing Date;

(f) all agreements, leases and contracts of Seller that relate to the ownership and operation of the Subject Line other than those listed in Section 2.01(c) the Disclosure Schedules (the "Excluded Contracts");

(g) all prepaid expenses, credits, advance payments, security, deposits, charges, sums and fees;

(h) all policies of insurance and any proceeds or return of premiums thereunder;

(i) all claims, rights and interests of Seller in and to any deposits or refunds of Taxes, or Tax credits for any period, and all Tax deposits, refunds and credits related to the Purchased Assets for taxable periods (or portions thereof, having regard to Section 7.04) ending on or prior to the Closing Date (with all such Tax refunds and credits calculated as if the relevant Tax period ended on the Closing Date);

(j) Seller's Tax Returns and related books and records;

(k) all rights of Seller under or pursuant to this Agreement, the other Transaction Documents or any other instrument between Seller and Purchaser or their respective Affiliates entered into pursuant to this Agreement or the transactions contemplated hereby; and

(l) all other assets of Seller and its Affiliates.

Section 2.03. Required Consent Contracts.

(a) Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign or otherwise sell, convey or transfer any Assigned Contract (or any claim, right or benefit arising thereunder or resulting therefrom) prior to receiving any required consent or approval for such assignment, conveyance or transfer, or to enter into any

other agreement or arrangement with respect thereto, if an attempted assignment, sale, conveyance or transfer thereof, or entering into any such agreement or arrangement, without the consent or approval of a Third Party, would constitute a breach thereof, or other contravention thereunder, be ineffectivewith respect to any party thereto or in any way adversely affect the rights of Seller or Purchaser thereunder; *provided*, *however*, that, if any such Assigned Contract may be so assigned, sold, conveyed or transferred without having any of the foregoing consequences, such

Assigned Contract shall be so assigned, sold, conveyed and transferred. With respect to any Assigned Contract as to which the consent or approval of a Third Party is required (each a "Required Consent Contract"), promptly after the date hereof, and for a period of 12 months from and after the Closing, Seller and Purchaser will use commercially reasonable efforts to obtain the written consent or approval of such Third Party(ies) to such Required Consent Contract for the sale, transfer, assignment and novation thereof to Purchaser, or written confirmation from such parties reasonably satisfactory in form and substance to Seller and Purchaser confirming that such consent is not required; *provided*, *however*, that Seller shall not be required to pay or incur any costs or expenses (including any requested consent fees) to obtain any required consent or approval under a Required Consent Contract, such costs and expenses to be borne solely by Purchaser, in the event that Purchaser, in its discretion, approves the payment or incurrence of such costs and expenses.

(b) Until such consent or approval is obtained with respect to any Required Consent Contract, to the extent permitted by applicable Law and the terms of any Required Consent Contract not assigned pursuant to Section 2.03(a), from and after the Closing Date, (i) Purchaser will obtain the claims, rights and benefits of Seller arising under such Required Consent Contract, (ii) Purchaser will perform, fulfill and discharge all of Seller's obligations and Liabilities thereunder that are Assumed Liabilities in a timely manner and in accordance with all applicable Laws and the terms of such Required Consent Contract for the benefit of Seller and the other party or parties thereto, (iii) Purchaser will indemnify, defend, and hold harmless Seller and its Affiliates from any Losses asserted against, incurred or suffered by any of them that relate to, result from or arise out of the failure of Purchaser to comply with this Section 2.03(b) with respect to any Required Consent Contract, including as a result of performance, non-performance or deficient performance under such Required Consent Contract and (iv) Seller agrees to enforce, at the reasonable request of Purchaser and at the expense and for the account of Purchaser, any rights of Seller under or arising from the Required Consent Contracts against any Third Party, including the right to elect to terminate any such Required Consent Contracts (or rights thereunder) in accordance with the terms of such Required Consent Contracts upon the written direction of Purchaser; *provided* that Purchaser shall be responsible for any termination fees resulting from or arising out of the termination of any Required Consent Contracts at the direction of Purchaser.

(c) With respect to any Required Consent Contract not assigned or transferred pursuant to Section 2.03(a) for which Purchaser must undertake performance pursuant to Section 2.03(b), Seller will pay to Purchaser any monies received by Seller from any Third Party for services rendered by Purchaser after the Closing Date, less any actual out-of-pocket costs or expenses incurred by Seller and payable to any Third Party as a result of receiving and processing payment of such monies.

(d) At the request of Seller, Purchaser shall use commercially reasonable efforts to assist Seller in seeking the unconditional release of Seller from any and all obligations or Liabilities under or in respect of any Assigned Contract constituting a Purchased Asset on the Closing Date or thereafter deemed a Purchased Asset as of the Closing Date, including by means

of novation, release or similar arrangement with the applicable Third Party; *provided* that Purchaser shall not be responsible for any fees, out-of-pocket costs or expenses resulting from or arising out of seeking such unconditional releases.

ARTICLE III.
LIABILITIES

Section 3.01. Assumed Liabilities.

From and after the Closing Date, Purchaser assumes, and agrees to pay, perform and discharge in accordance with the respective terms and subject to the respective conditions thereof, the following Liabilities of Seller in all cases excepting the Excluded Liabilities (collectively, the "Assumed Liabilities"):

(a) all Liabilities arising out of, related to or required to be performed under the Purchased Assets, including the Assigned Contracts, to the extent arising out of, relating to or resulting from any act, error or omission of Purchaser occurring at or following the Closing; *provided*, *however*, that until such time as any Required Consent Contract is assigned or transferred to Purchaser pursuant to an effective consent or approval, Purchaser shall assume and undertake to pay, perform and discharge such Required Consent Contract in accordance with the terms of Section 2.03 herein;

(b) all Liabilities arising out of or related to the ownership, operation and use of the Subject Line from and after the Closing, including all Taxes that Purchaser is obligated to assume under Section 7.04; and

(c) all Liabilities arising out of, or related to, the ownership, operation or use of the Purchased Assets from and after the Closing. Seller shall fully cooperate and timely provide to Purchaser any information requested by Purchaser to properly review, evaluate, settle and/or litigate any Liabilities to be assumed by Purchaser pursuant to this Section 3.01(c).

Section 3.02. Excluded Liabilities.

Purchaser shall not assume or be obligated to pay, perform or otherwise discharge any of the following Liabilities of Seller (all of such Liabilities not so assumed by Purchaser being referred to herein as the "Excluded Liabilities"):

(a) except as otherwise provided in Section 2.03 herein, any Liabilities arising out of or related to the Excluded Assets or arising out of or related to indebtedness for borrowed money or capital lease obligations;

(b) all Environmental Liabilities arising out of or related to the ownership, operation or use of the Purchased Assets, including the disposal of Hazardous Substances at any locationwhatsoever, whether arising out of, related to, or resulting from, the ownership, operation or use of the Purchased Assets prior to the Closing, including all Environmental Liabilities for any Release of Hazardous Substances at the Purchased Assets or any other location whatsoever or violation of Environmental Law at the Purchased Assets, first occurring prior to the Closing even if continuing after the Closing, including any Environmental Liabilities for the Remedial Action or Release of Hazardous Substances identified on Section 3.02(b) of the Disclosure Schedules ("Prior Environmental Liabilities");

(c) any Liability for Seller Taxes or public utilities relating to the Purchased Assets for periods (or portions thereof, having regard to Section 7.04), ending on or prior to the Closing Date;

(d) any Liability of Seller (i) to any employees or independent contractors of Seller and its Affiliates relating to their employment or retention by Seller and its Affiliates (including for salary, wages, commissions, labor protective conditions, or any other form of compensation, severance pay, termination pay, notice of termination of employment or pay in lieu of such notice, damages for wrongful dismissal, health, accident, sickness, death and disability benefits, workers compensation benefits, claims made under the Federal Employers Liability Act or the Consolidated Omnibus Budget Reconciliation Act of 1985, each as amended from time to time, employee benefits and claims, employee welfare benefits and claims, and all other claims arising out of, relating to or resulting from their employment or provision of services to Seller and its Affiliates) or (ii) under any employee benefit plan or agreement, employee welfare plan or employee pension plan of Seller and its Affiliates, including any multi-employer pension plan in which Seller or any of its Affiliates participates;

(e) any Liability of Seller in respect of any breach of or default under, or any non-compliance with respect to, any Assigned Contract by Seller to the extent arising out of, relating to or resulting from any act, error or omission of Seller occurring at or prior to Closing or any payment obligation of Seller for any goods or services provided to Seller under any Assigned Contract prior to Closing;

(f) any Liabilities arising out of, related to, or resulting from, the ownership, operation or use of the Purchased Assets prior to the Closing. Purchaser shall fully cooperate and timely provide to Seller any information requested by Seller to properly review, evaluate, settle and/or litigate any Liabilities to be assumed by Seller;

(g) any Liability of Seller to indemnify any Person by reason of the fact that such Person was a partner, manager, trustee, director, officer, employee or agent of Seller or anyof its Affiliates or was serving at the request of any such Person as a partner, manager, trustee, director, officer, employee or agent of another Person;

(h) except as otherwise provided by the terms of this Agreement, any Liability of Seller for costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, or under this Agreement or any other Transaction Document, or of Seller to any Affiliate or Representative of Seller;

(i) any Liability of Seller arising out of any collective bargaining agreement or labor contract to which Seller or any Affiliate is a party; and

(j) except as otherwise provided in this Agreement, any Liability of Seller to any customer of Seller or any Liability for any accounts payable of Seller as of the Closing, in each case related to or resulting from the ownership and operation of the Purchased Assets prior to the Closing.

ARTICLE IV.
CLOSING AND PURCHASE PRICE

Section 4.01. Closing; Closing Date Deliveries.

The closing of the transactions contemplated by this Agreement (the "Closing") shall take place, by exchange of documents by Electronic Delivery (except for the Deed, for which Seller shall deliver to Purchaser one (1) original wet-ink, signed and notarized copy for each county in which the Transferred Real Property is located), (a) within 90 days of the effective date of the STB Approvals, subject to the satisfaction of the conditions set forth in ARTICLE VIII (other than those conditions that are to be satisfied by action taken at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or, to the extent permitted, waived by the Party(ies) entitled to the benefit thereof, or (b) at such other place, time and date as may be agreed between Seller and Purchaser (such date, the "Closing Date").

Section 4.02. Purchase Price; Adjustment Amount.

(a) In consideration of the transactions contemplated by this Agreement, Purchaser agrees (i) to pay $[●] (the "Base Purchase Price") *plus or minus* the Adjustment Amount calculated in the manner set forth in Section 4.02(b) (collectively, the "Purchase Price") and (ii) to assume the Assumed Liabilities.

(b) Not less than three Business Days prior to the Closing Date, Seller shall deliver to Purchaser a written statement in the form of Exhibit B (the "Adjustment Statement") setting forth (i) Seller's good faith estimate of Purchaser's share of the prorated amounts for the following, in each case as of the Closing Date (collectively, the "Adjustment Amount"): (A) Taxes in accordance with Section 7.04(b), (B) pre-paid (or accrued, but unpaid) fees related to the Permits, (C) payables and receivables under the Assigned Contracts and (D) [●], and (ii) on the basis of the foregoing, a calculation of the Purchase Price payable by Purchaser at Closing. For the avoidance of doubt, if the Adjustment Amount is a positive number, such amount shall be added to the Base Purchase Price to calculate the Purchase Price and, if the Adjustment Amount is a negative number, the absolute value of such amount shall be deducted from the Base Purchase Price to calculate the Purchase Price.

Section 4.03. Seller Closing Deliveries.

At the Closing and subject to the terms and conditions herein contained, Seller shall deliver to Purchaser the following:

(a) a bill of sale for the personal property included in the Purchased Assets, in substantially the form attached hereto as Exhibit C, duly executed by Seller (the "Bill of Sale");

(b) a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that Seller is not a foreign Person within the meaning of Section 1445 of the Code as well as IRS Form W-9 of Seller;

(c) the Transition Services Agreement, in substantially the form attached as Exhibit D regarding the provision of transition services, including Seller's continued operation, maintenance and dispatching of the Subject Line until Purchaser assumes such operations, duly executed by Seller (the "Transition Services Agreement");

(d) a quitclaim deed with respect to the transfer to Purchaser of the Transferred Real Property in such county, duly executed by Seller (collectively, the "Deed");

(e) an assignment and assumption agreement evidencing the sale, assignment, transfer, conveyance and delivery to Purchaser, and Purchaser's purchase, acquisition and acceptance from Seller on the Closing Date, of the Assigned Contracts and Assumed Liabilities, in substantially the form attached hereto as Exhibit E, duly executed by Seller (the "Assignment and Assumption Agreement");

(f) a certificate executed by an officer of Seller certifying that attached thereto are (i) true and correct copies of the organizational documents of Seller; (ii) a true and correct copy of the resolutions of the board of directors or other governing body of Seller authorizing the execution and delivery of this Agreement and the other Transaction Documents and the performance by Seller of the transactions contemplated hereby and thereby; and (iii) a certificate of good standing in respect of Seller from its applicable jurisdiction of organization; and

(g) an officer's certificate of Seller required by Section 8.02(c) dated as of the Closing Date in substantially the form attached hereto as Exhibit F; *provided* that where this Section 4.03 (or the definition of such document) refers to a Transaction Document other than this Agreement as being in substantially the form attached hereto, the form of such Transaction Document shall be subject to such changes as may be agreed to by the Parties, acting reasonably and in good faith, between the date hereof and the Closing Date.

Section 4.04. Purchaser Closing Deliveries.

At the Closing and subject to the terms and conditions herein contained, Purchaser shall deliver to Seller the following:

(a) the Purchase Price, by wire transfer of immediately available funds to an account designated in writing by Seller to Purchaser prior to the Closing Date;

(b) a counterpart of each Bill of Sale, duly executed by Purchaser;

(c) a counterpart of the Transition Services Agreement, duly executed by Purchaser;

(d) a counterpart of the Assignment and Assumption Agreement, duly executed by Purchaser;

(e) an officer's certificate of Purchaser required by Section 8.03(c), dated as of the Closing Date in substantially the form attached hereto as Exhibit G;

(f) a certificate, dated as of the Closing Date, from an officer of Purchaser certifying that attached thereto are (i) true, correct and complete copies of the organizational and governing documents of Purchaser; (ii) a true and correct copy of the resolutions of the managers or members of Purchaser authorizing the execution and delivery of this Agreement and the other Transaction Documents and the performance by Purchaser of the transactions contemplated hereby and thereby; (iii) a good standing certificate in respect of Purchaser from its applicable jurisdiction of organization; and (iv) an IRS Form W-9 or applicable IRS Form W-8.

Section 4.05. Withholding.

Provided that the certification contemplated by Section 4.03(b) is provided by Seller, neither Seller nor Purchaser expects for any withholding to be imposed under any applicable Tax Law in connection with the transactions contemplated by this Agreement. Notwithstanding the foregoing, Purchaser and its Affiliates shall be entitled to deduct and withhold from the consideration otherwise payable or deliverable pursuant to this Agreement to Seller such amounts as are required to be withheld and paid over to the applicable Governmental Authority under the Code or any applicable provision of Tax Law; *provided*, *however*, that (a) Purchaser shall use commercially reasonableefforts to notify Seller prior to making any such deduction or withholding and consider in good faith any claim by Seller that such withholding is not required or should be imposed at a reduced rate, and (b) Seller shall be given a reasonable opportunity to provide any Tax forms which might reduce or eliminate such withholding. Any amounts deducted and withheld pursuant to this Section 4.05 and timely paid over to the applicable Governmental Authority shall be treated for all purposes of this Agreement as having been paid to Seller in respect of which such deduction or withholding was made.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser that the statements set forth in this ARTICLE V are true and correct as of the date hereof, except as qualified by the correspondingly numbered disclosure schedules delivered by Seller to Purchaser (the "Disclosure Schedules") and arranged in sections corresponding to numbered and lettered sections contained in this ARTICLE V.

Section 5.01. Organization and Standing.

Seller (a) is duly organized, validly existing and in good standing under the Laws of the State of [Delaware], (b) is duly qualified to do business as a foreign entity and is in good standing in each jurisdiction in which the conduct of its business so requires, and (c) has the corporate power and authority to own the Purchased Assets owned by it.

Section 5.02. Authorization, Execution and Enforceability.

Seller has the requisite corporate power, capacity and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party, and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and each other Transaction

Document to which it is a party, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Seller. This Agreement has been, and each other Transaction Document to which it is a party will be, duly executed and delivered by Seller. Assuming due authorization, execution and delivery by Purchaser, this Agreement constitutes, and each other Transaction Document to which it is a party will constitute when executed, the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, and by general equitable principles (regardless of whether such enforceability is considered in a Proceeding in equity or at Law).

Section 5.03. No Conflict or Violation.

Except as set forth in Section 5.03 of the Disclosure Schedules, and subject to the STB Approvals, the execution, delivery and performance of this Agreement and each other Transaction Document to which it is a party and the consummation of the transactions contemplated hereby and thereby by Seller will not: (a) conflict with any of the provisions of Seller's organizational documents, (b) result in a violation or contravention of any Law or Governmental Order applicable to Seller, (c) result in a breach of, or constitute a default under, or otherwise give any Person the right to terminate or accelerate the performance required under, any Assigned Contract, or (d) result in the creation or imposition of any Encumbrance on or with respect to any of the Purchased Assets.

Section 5.04. No Governmental Consent or Filing.

No consent, approval or authorization of, or declaration or filing with, or notice to, any Governmental Authority is required to be obtained, made or given by Seller to transfer or assign any Purchased Asset to Purchaser, or otherwise in connection with the execution, delivery or performance of this Agreement or any other Transaction Document, or the consummation of the transactions contemplated hereby or thereby, except for the STB Approvals and FCC Approval.

Section 5.05. Assigned Contracts.

Other than expirations or non-renewals following the date of this Agreement in accordance with the terms of the applicable Assigned Contract, each Assigned Contract is in full force and effect, and is valid, binding and enforceable against Seller and, to the Knowledge of Seller, the other parties thereto in accordance with its terms, in each case, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, and by general equitable principles (regardless of whether such enforceability is considered in a Proceeding in equity or at Law). As of the date hereof, neither Seller nor, to the Knowledge of Seller, any other party to an Assigned Contract is in breach or violation of, or default under, any Assigned Contract and, to the Knowledge of Seller, no event has occurred that with or without notice or lapse of time or both would constitute a breach or default (whether by lapse of time or notice or both) of any Assigned Contract. Seller has not received, since January 1, 2021, any written notice of any dispute or claim asserting any material breach or default under any Assigned Contract that has not been fully resolved or withdrawn by a Third Party without any further Liability or obligation of Seller. Seller is not currently renegotiating any of the Assigned Contracts

or paying liquidated damages in lieu of performance thereunder. No Assigned Contract contains terms unduly burdensome to Seller with respect to the Purchased Assets or is harmful to the Subject Line.

Section 5.06. Purchased Assets.

Except as set forth in Section 5.06 of the Disclosure Schedules, Seller owns good, valid and marketable title to, or other legal rights to possess and use, the tangible personal property included in the Purchased Assets, free and clear of Encumbrances other than Permitted Encumbrances.

Section 5.07. Litigation.

Except as set forth in Section 5.07 of the Disclosure Schedules, there are no Proceedings pending or, to the Knowledge of Seller, threatened, seeking to restrain or prohibit Seller from entering into this Agreement or any transactions contemplated hereby or prohibit the Closing, or seeking damages against Seller or the Purchased Assets as a result of the consummation of this Agreement. No Proceeding is pending, and, to Sellers' Knowledge, no claim has been made or threatened, nor does there exist any fact or circumstance that could give rise to such a claim, in each case, since January 1, 2021, which has resulted in or reasonably could be expected to result in a liability or an indemnification obligation with respect to Seller.

Section 5.08. Real Property.

(a) [Section 5.08(a) of the Disclosure Schedules sets forth a list of all leases of real property to which Seller is a party included in the Purchased Assets (the real property subject to such leases being referred to herein as the "Leased Real Property"). Except as set forth in Section 5.08(a) of the Disclosure Schedules (i) Seller is not in default under any lease of Leased Real Property or has received notice of any asserted default, (ii) no event or condition exists which constitutes, or after notice or lapse of time or both would constitute, a default on the part of Seller under any lease of Leased Real Property, and (iii) as of the date of this Agreement, Seller has not received written notice from any other party to a lease of Leased Real Property that such other party intends to terminate, not renew, or renegotiate the terms of, any such lease.]

(b) There are no leases, subleases, concessions, licenses or other contracts granting to any Person other than Seller the right to use or occupy any Transferred Real Property [or Leased Real Property, in each case] that would constitute an Encumbrance (other than a Permitted Encumbrance). There are no outstanding options, rights of first offer, or rights of first refusal to purchase or lease any Transferred Real Property or any portion thereof or any interest therein.

(c) Seller has title to or other valid rights in and to the Transferred Real Property, subject only to Permitted Encumbrances[, and has a valid leasehold interest in each Leased Real Property, in each case] sufficient to enable Purchaser to operate the Purchased Assets after Closing in the same manner as currently operated by Seller and its Affiliates.

Section 5.09. Environmental Matters.

Except as set forth in Section 5.09 of the Disclosure Schedules:

(a) Seller in its ownership, operation and use of the Purchased Assets, including operation of the Subject Line and ownership of the Transferred Real Property (i) is, and has been since March 1, 2017, in compliance with all Environmental Laws and (ii) possesses and is in compliance with and has since March 1, 2017 possessed, been in compliance with and filed timely renewal applications for, all Permits that are required pursuant to Environmental Laws;

(b) (i) No Governmental Orders have been received by Seller from a Governmental Authority or other Person, and (ii) there are no Proceedings pending or, to the Knowledge of Seller, threatened against Seller, in the case of each of clauses (i) and (ii), that (A) relates to the Purchased Assets and (B) alleges a violation of any Environmental Law by Seller, seeks to impose Liabilities on Seller under an Environmental Law, or seeks the revocation, modification or termination of a Permit required pursuant to Environmental Laws held by Seller, that has not been settled, dismissed, paid or otherwise resolved or for which outstanding obligations exist under a settlement agreement;

(c) To the Knowledge of Seller, none of the Transferred Real Property [or the Leased Real Property] has been placed or proposed for placement on the National Priorities List or any similar state list of properties requiring Remedial Action under Environmental Law;

(d) Seller is not subject to any pending or threatened Proceeding in connection with the Purchased Assets alleging or concerning (i) any Liabilities arising from the Release or threatened Release of any Hazardous Substances, (ii) any Liabilities for personal injury or threatened personal injury, or damage or threatened damage to property or natural resources or (iii) any Liabilities or costs arising out of or under any Environmental Law;

(e) There has been no Releases of any Hazardous Substances on, at, under, to or from the Transferred Real Property [or the Leased Real Property,] that would reasonably be expected to require Remedial Action;

(f) The Remedial Action identified on Section 3.02(b) of the Disclosure Schedules for certain Purchased Assets has been completed;

(g) To the Knowledge of Seller, there are no state or federal liens on the Transferred Real Property [or the Leased Real Property] arising under Environmental Laws for the payment of money by any Governmental Authority;

(h) The Transferred Real Property is not subject to a pending or recorded activity use limitation, institutional control or engineering control pursuant to any Environmental Laws;

(i) To the Knowledge of Seller, there is not constructed, placed, deposited, released, stored, disposed, leaching nor located on any of the Purchased Assets any polychlorinated biphenyls ("PCBs") or transformers, capacitors, ballasts or other equipment which contain dielectric fluid containing PCBs, or any other insulating material containing urea formaldehydes;

(j) To the Knowledge of Seller, there are no underground storage tanks, landfills, impoundments, waste piles, sumps, or gas or oil wells, or associated piping, located on the Transferred Real Property [or the Leased Real Property];

(k) Neither this Agreement nor the consummation of the transactions contemplated herein will result in any obligation for site investigation or cleanup, or notification to or consent of any Governmental Authority or Third Party, pursuant to any Environmental Laws, including any of the so-called "transaction triggered" or "responsible property transfer" Environmental Laws; and

(l) Seller has provided to Purchaser all material environmental reports, including compliance audits, Phase I environmental site assessments, and Phase II environmental site assessments, in Seller's possession regarding the Purchased Assets.

Section 5.10. Tax Matters.

(a) all Tax Returns required to be filed by or with respect to the Purchased Assets have been timely filed and all such Tax Returns are correct and complete in all material respects. All material Taxes required to have been paid with respect to the Purchased Assets have been timely paid (whether or not shown as due on any Tax Return);

(b) There are no Encumbrances for Taxes upon the Purchased Assets;

(c) Seller has withheld and paid or remitted all material Taxes required to be withheld and paid in connection with amounts paid or owing by it to any Person, and all Tax Returns required with respect thereto have been completed substantially in accordance with Law and timely filed;

(d) None of the Purchased Assets are subject to any tax partnership agreement or are otherwise treated, or required to be treated, as held in an arrangement requiring a partnership income Tax Return to be filed under Subchapter K of Chapter 1 of Subtitle A of the Code; and

(e) There are no abatements of or exemptions from Taxes applicable to the Purchased Assets.

The representations and warranties contained in this Section 5.10 constitute the sole representations and warranties of Seller relating to Taxes.

Section 5.11. Compliance with Laws; Permits.

Seller has complied with and is in compliance with all Laws applicable to the Subject Line and the Purchased Assets. No violation of any Permit or Laws governing the issuance or continued validity thereof has occurred. Seller has all Permits necessary to own the Purchased Assets and operate the Subject Line lawfully and in the manner in which the Purchased Assets and the Subject Line are now operated, which Permits are listed in Section 5.11 of the Disclosure

Schedules. No Proceeding is pending or, to the Knowledge of Seller, threatened, to revoke or limit any Permit.

Section 5.12. Conduct of Business.

Since January 1, 20[●] to the date of this Agreement, (a) no unrepaired physical Loss or damage has occurred to the Purchased Assets in an amount exceeding $1,000,000 individually, and (b) the Purchased Assets have not suffered any event, change, development, circumstance or effect that, individually or together with any other event, change, development, circumstance or effect, has resulted in or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.13. Condition of Subject Line and Bridges.

True and complete copies of all periodic Subject Line and bridge inspections and exemption reports in the possession or under the control of Seller or any of its Affiliates describing the condition of all of the Subject Line and bridges owned, leased or operated by Seller have been provided to Purchaser. All of such Subject Line and bridges are in good operating condition and repair and are capable of being utilized by Purchaser after Closing in the same manner in which it has been used by Seller, except as otherwise indicated on Section 5.13 of the Disclosure Schedules (specified by mile posts). Section 5.13 of the Disclosure Schedules sets forth the current track class of all Subject Line owned, lease or operated by Seller, and all slow orders affecting the designated track class. All of the Subject Line and bridges owned, leased or operated by Seller and currently in service are maintained and operated in compliance with all Laws in all material respects.

Section 5.14. Brokerage.

Except as set forth in Section 5.14 of the Disclosure Schedules, no Person is entitled to any brokerage commission, finders' fee or similar compensation in connection with this Agreement and the transactions contemplated hereby based on any arrangement or agreement made by or on behalf of Seller.

Section 5.15. Insurance.

Section 5.15 of the Disclosure Schedules sets forth a true and complete list and brief description (including nature of coverage, limits, deductibles, premiums and the loss experience for the most recent two years with respect to each type of coverage) of all policies of insurance maintained, owned or held by Seller on the date hereof with respect to the Purchased Asset. All insurance policies have been in effect since they were issued and remain in full force and effect in accordance with their terms. All premiums payable under such insurance policies havebeen timely paid and Seller has complied with each of such insurance policies and has not failed to give any notice or present any claim thereunder in a due and timely manner. With respect to each insurance policy, (a) the coverage limits under such policy have not been exhausted or impaired, (b) to the Knowledge of Seller, Seller has given timely notice to the applicable carrier of all matters occurring prior to the date hereof which may give rise to a claim under such policy and (c) to the Knowledge of Seller, the applicable carrier is not bankruptcy or insolvent or seeking

reorganization, winding-up, liquidation, dissolution or other similar relief with respect to it or its debts.

Section 5.16. Sufficiency of Assets.

(a) The Purchased Assets include all of the assets and rights necessary to conduct the business of Seller with respect to the Subject Line in the same manner as currently conducted by Seller and to enable Purchaser to operate the business of Seller with respect to the Subject Line after the Closing in the same manner as operated by Seller as of the Closing Date.

(b) Except as disclosed on Section 5.16(b) of the Disclosure Schedules, there are no material assets, rights, licenses, Permits or businesses of any kind or description, real, personal or mixed, tangible or intangible, owned, held or currently used for the conduct of the business of Seller with respect to the Purchased Assets that are not owned by Seller or currently used by it pursuant to valid and existing leases or licenses.

ARTICLE VI.
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller that the statements set forth in this ARTICLE VI are true and correct as of the date hereof.

Section 6.01. Organization and Standing.

(a) Purchaser is duly organized, validly existing and in good standing under the Laws of the State of Louisiana, (b) Purchaser is duly qualified and in good standing as a foreign entity and is in good standing in each jurisdiction in which the conduct of its business so requires, except where the failure to be so qualified and in good standing would not reasonably be expected to have a material adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement and (c) Purchaser has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its businesses as now being conducted.

Section 6.02. Authorization, Execution and Enforceability.

Purchaser has the requisite corporate power, capacity and authority to execute and deliver this Agreement and each other Transaction Document to which it is a party, and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Purchaser of this Agreement and each other Transaction Document to which it is a party, the performance of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Purchaser. This Agreement has been, and each other Transaction Document to which it is a party will be, duly executed and delivered by Purchaser. Assuming due authorization, execution and delivery by Seller, this Agreement constitutes, and each other Transaction Document to which it is a party will constitute when executed, the valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws relating to or affecting

creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a Proceeding in equity or at Law).

Section 6.03. No Conflict or Violation.

Subject to the STB Approvals and the FCC Approval, the execution, delivery and performance of this Agreement and each other Transaction Document to which it is a party and the consummation of the transactions contemplated hereby and thereby by Purchaser will not: (a) conflict with any of the provisions of its organizational documents, (b) result in a violation or contravention of any statute, Law or Governmental Order applicable to it, (c) result in a breach of or constitute a default under, or otherwise give any Person the right to terminate or accelerate the performance required under, any contract or agreement to which Purchaser is a party, or (d) result in the creation or imposition of any Encumbrance on or with respect to any property or asset of Purchaser.

Section 6.04. No Governmental Consent or Filing.

No consent, approval or authorization of, or declaration or filing with, or notice to, any Governmental Authority is required to be obtained, made or given by Purchaser in connection with the execution, delivery or performance of this Agreement or any other Transaction Document to which it is a party, or the consummation of the transactions contemplated hereby or thereby, except for (a) the STB Approvals, (b) the FCC Approval and (c) those that, if not obtained, made or given, would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Purchaser to consummate the transactions contemplated hereby.

Section 6.05. Litigation.

As of the date hereof there are no Proceedings pending or, to the Knowledge of Purchaser, threatened in writing against Purchaser, in each case that would reasonably be expected to have, individually or in the aggregate, a material adverse impact on the ability of Purchaser to consummate the transactions contemplated hereby.

Section 6.06. No Brokers.

No Person is entitled to any brokerage commission, finders' fee or similar compensation in connection with this Agreement and the transactions contemplated hereby based on any arrangement made by or on behalf of Purchaser.

ARTICLE VII.
COVENANTS

Section 7.01. Effort

(a) From and after the date hereof, Purchaser and Seller shall use their respective commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under any applicable Law to consummate and make effective in the most expeditious manner possible the transactions

contemplated by this Agreement, including (i) the preparation and filing of all applications, forms, registrations and notices required to be filed to consummate the transactions contemplated by this Agreement, (ii) taking all actions necessary to obtain (and cooperating with each other in obtaining) any consent or approval of any Third Party, including any Governmental Authority, required to be obtained or made by Purchaser or Seller in connection with the transactions contemplated by this Agreement and (iii) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by this Agreement and to fully carry out the purposes of this Agreement.

(b) Notwithstanding anything to the contrary herein, Seller shall not be obligated to pay any costs, fees or expenses or incur any Liability in connection with any applications, petitions for exemption, forms, registrations, documentation or notices required to be filed by Purchaser to obtain any required consent or approval of any Governmental Authority or other Person in connection with the transactions contemplated by this Agreement, such costs, fees, expenses or Liabilities to be borne entirely by Purchaser.

Section 7.02. Conduct of Business.

(a) Except as set forth in Section 7.02(a) of the Disclosure Schedules, as required by applicable Law, as otherwise required or contemplated by the terms of this Agreement, or as Purchaser may otherwise consent to (such consent not to be unreasonably withheld, conditioned or delayed), from the date of this Agreement to the Closing, Seller shall:

(i) maintain and operate the Purchased Assets in the ordinary course and preserve intact the Purchased Assets and Seller's business relationships with material customers and others having material business relationships with Seller relating to the Purchased Assets;

(ii) pay or cause to be paid all material costs and expenses (including insurance premiums) incurred in connection therewith in a timely manner, except those contested in good faith by Seller;

(iii) use commercially reasonable efforts to keep all Assigned Contracts in full force and effect (and, where such Assigned Contracts are due to expire prior to Closing, to secure a renewal or extension of such Assigned Contracts on terms substantially similar to their existing terms);

(iv) comply with all of the material covenants contained in all Assigned Contracts;

(v) maintain in force until the Closing Date insurance policies equivalent to those in effect on the date hereof;

(vi) comply in all material respects, with all applicable Laws;

(vii) during normal business hours, in accordance with reasonable procedures established by Seller and in a manner that does not unreasonably interfere with the normal operation of Seller's business

accommodate reasonable access by Purchaser to (A) the Transferred Real Property [and the Leased Real Property] included in the Purchased Assets to allow Purchaser to prepare and stage for operations effective as of the Closing Date and (B) copies of the books and records relating to the ownership and operation of the Purchased Assets;

(viii) not take any of the following actions: (A) sell, pledge, dispose of, lease, license or encumber any of the Purchased Assets other than in the ordinary course of business; (B) terminate or materially amend any Assigned Contract; (C) grant trackage rights, haulage rights or any right to use all or a part of the Subject Line to any Person; (D) abandon any part of the rail lines included in the Purchased Assets; (E) authorize any of, or commit or agree to take, whether in writing or otherwise, or do any of, the foregoing actions; (F) enter into, modify, amend or terminate any Assigned Contract.

(b) Anything to the contrary in this Agreement notwithstanding, the Parties acknowledge and agree that nothing in this Section 7.02 shall be deemed to limit the sale, lease, license, disposition or transfer of any Excluded Assets by Seller prior to, at or after the Closing.

(c) Anything to the contrary in this Agreement notwithstanding, nothing in this Section 7.02 shall prohibit or otherwise restrict in any way the operation of any business of Seller or its Affiliates, except solely with respect to the operation of the Subject Line and the Purchased Assets by Seller and its Affiliates.

(d) In the event of any damage to or destruction of any of the tangible Purchased Assets following the date hereof but prior to Closing (normal wear and tear excepted), to the extent that such damage or destruction results in costs to repair or replace such tangible Purchased Assets in excess of $1,000,000 in the aggregate, Seller shall, at its sole discretion, either (i) repair or replace such tangible Purchased Assets prior to or after Closing, at its own expense, or (ii) assign to Purchaser the value of any insurance proceeds received with respect to such damage or destruction.

Section 7.03. Expenses; No Offset.

Except as otherwise specifically provided in this Agreement, the Parties to this Agreement each shall bear their respective expenses incurred in connection with the preparation, execution and performance of this Agreement and consummation of the transactions contemplated hereby, including all fees and expenses of their respective Representatives. Neither Party may make any offset against amounts due to the other Party or its Affiliates pursuant to this Agreement, the other Transaction Documents or otherwise.**Section .04.** Tax Matters[7].

(a) All amounts payable by Purchaser to Seller pursuant to this Agreement do not include any goods and services, harmonized sales, value-added, sales, use, consumption, multi staged, ad valorem, personal property, customs, excise, stamp, documentary, transfer or similar Taxes, duties or charges arising out of or in connection with the transactions effected pursuant to this Agreement (collectively, "Transfer Taxes"). All Transfer Taxes, and the collection and remittance thereof to appropriate Governmental Authorities, are the responsibility and for the account of Seller. Seller and Purchaser agree to use commercially reasonable efforts to mitigate, reduce or eliminate any Transfer Taxes, and to obtain any certificate or other document from any Governmental Authority or any other Person, and to jointly make any election as may be available

to mitigate, reduce or eliminate any such Transfer Taxes that could be imposed on Seller as a result of the consummation of the transactions contemplated by this Agreement. Seller and Purchaser shall cooperate with one another in the preparation of any necessary Tax Returns and other related documentation with respect to such Transfer Taxes (including any exemption certificates and forms as each may request to establish an exemption from (or otherwise reduce) or make a report with respect to such Transfer Taxes).

(b) At Closing, Purchaser, on the one hand, and Seller, on the other hand, shall each pay its share of Asset Taxes through an adjustment to the Purchase Price, prorated as of the Closing Date based on the number of days in the tax period that ends on and includes the Closing Date and the number of days in the tax period that begins after the Closing Date, of any Asset Taxes that are due and payable with respect to the calendar year in which Closing occurs. At least three Business Days prior to Closing, Seller shall provide Purchaser its calculation of such proration, including supporting documentation. If the relevant property Tax notices have not been received prior to Closing, the Taxes shall be prorated based upon the most recent property Tax notices, which proration shall be final and not subject to further adjustment based on receipt of actual property Tax notices or any audit. To the extent the actual amount of an such Asset Tax (or the amount thereof paid or economically borne by a Party) is ultimately determined to be different than the amount (if any) that was taken into account as an adjustment to the Purchase Price under Section 4.02(b), timely payments will be made from one Party to the other to the extent necessary to cause each Party to bear the amount of such Tax that is allocable to such Party under this Section 7.04(b).

(c) Purchaser and Seller shall, and shall cause their respective Affiliates to, cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns, opening and closing of Tax accounts, and any audit, litigation or other Proceeding with respect to Taxes owed or claimed to be owed with respect to the Purchased Assets and the Assumed Liabilities.

(d) The Purchase Price related to the Purchased Assets (and the agreed fair market value of the Assumed Liabilities, if any, required to be treated as consideration under Section 1060 of the Code) shall be allocated among the Purchased Assets for Tax purposes (and also for all non-Income Tax purposes to the extent acceptable) in accordance with Section 1060 ofthe Code and the Treasury Regulations thereunder and as set forth on Exhibit H, which schedule also sets forth the identifying information to be included in Part I of IRS Form 8594 (the "Allocation Schedule"). Such Allocation Schedule shall specifically set forth the allocation in accordance with Section 1060 of the Code the amount allocated to the Purchased Assets that are within the Subject Line. A draft of the Allocation Schedule shall be prepared by Purchaser and delivered to Seller not less than three Business Days prior to the Closing Date. Seller shall review and provide comments, and Purchaser shall duly consider all reasonable comments of Seller, and Seller and Purchaser will mutually determine the amounts set forth in the Allocation Schedule as of Closing. If Seller and Purchaser are unable to agree on the specific amounts to be allocated among the Purchased Assets in accordance with the Allocation Schedule then they shall continue to work together in good faith after Closing to reach agreement on such allocation. Upon reaching final agreement, either before or after Closing, the Parties shall reflect the agreed allocation in writing in an updated version of the Allocation Schedule.

(i) Purchaser and Seller shall file their income (and non-income, to the

extent permitted under applicable Law) Tax Returns (including IRS Form 8594 and any corresponding state or local Tax form) in all respects and for all purposes consistent with the Allocation Schedule, and no Party shall thereafter take a position on any such Tax Return that is inconsistent with the Allocation Schedule unless expressly required to do so by Law. Purchaser and Seller shall also apply the values in the Allocation Schedule as of Closing for purposes of determining the amount of any Transfer Tax and the value of recording any Transferred Real Property conveyed pursuant to this Agreement. If Seller and Purchaser are unable to agree on the specific amounts to be allocated among the Purchased Assets in accordance with the Allocation Schedule then they shall be required to continue to work together in good faith to agree after Closing on a preliminary allocation among the Purchased Assets that shall be used for purposes of determining the amount of any Transfer Taxes or property transfer Taxes, and such preliminary allocation shall be used for all such related Tax Returns.

(ii) If any such allocation is disputed by any taxation or other Governmental Authority, the Party receiving notice of such dispute shall promptly notify the other Party and the Parties shall use commercially reasonable efforts to sustain those allocations. The parties shall share information and cooperate to the extent reasonably necessary to permit the transactions contemplated by this Agreement to be properly, timely and consistently reported.

(e) Any adjustments to the Purchase Price shall be reflected as an adjustment to the price allocated to the specific asset, if any, giving rise to the adjustment, and if any such adjustment does not relate to a specific asset, such adjustment shall be allocated among the Purchased Assets in a manner consistent with the Allocation Schedule. Such adjustments, if any, shall be determined in good faith by mutual agreement of Seller and Purchaser.

Section 7.05. Further Actions.

(a) After the Closing, at the request of a Party, the other Party shall cooperate and use commercially reasonable efforts to carry out the intent of this Agreement, and each Party will execute and deliver such other documents and instruments of conveyance, assignment, transfer, assumption and delivery and take such other actions as the other Party reasonably may request in order to consummate, complete and carry out the transactions contemplated hereby, at the expense of the requesting Party.

(b) At Purchaser's sole cost and expense and within 30 days of the Closing Date, at each railroad-highway at-grade crossing on and along the Subject Line, Purchaser shall either (i) replace Seller's Emergency Notification Systems (ENS) signs posted at such crossings with Purchaser's ENS signs, which shall identify Purchaser as the emergency contact and provide an emergency telephone number to contact Purchaser at all times (24/7) pursuant to 49 C.F.R. 234, Subpart E, or (ii) use a sticker, decal or other device to cover Seller's name and emergency telephone number on the emergency sign and replace such information with Purchaser's name and an emergency telephone number to contact Purchaser at all times (24/7). Within 35 days of the Closing Date, Purchaser shall provide Seller notice, pursuant to Section 11.01 of this Agreement, that it has complied with this Section 7.05(b).

(c) Seller shall cooperate with Purchaser in connection with any requirement the Federal Railroad Administration ("FRA") may impose related to Positive Train Control

("PTC") and Purchaser adding any PTC-equipped subdivision on the Subject Line to Purchaser's PTC Implementation Plan or other changes related to PTC. Such cooperation shall include responding to communications from the FRA, submitting historical information in Seller's possession to the FRA directly or through Purchaser, providing physical access to the Subject Line, testing of PTC on the Subject Line, and any other actions necessary to comply with FRA requirements and requests.

(d) Seller shall provide to Purchaser copies of the Assigned Contracts prior to or as soon as practicable after the Closing.

Section 7.06. Insurance.

From and after the Closing Date, the Purchased Assets, the Assumed Liabilities, and the operations and assets and Liabilities in respect thereof, shall cease to be insured by Seller's or its Affiliates' insurance policies or by any of their self-insured programs, and none of Purchaser or its Affiliates shall have any access, right, title or interest to or in any Seller insurance policies(including to all claims and rights to make claims and all rights to proceeds) to cover the Purchased Assets, the Assumed Liabilities, the operation of the Subject Line or Liabilities in respect thereof. Seller or its Affiliates may amend any insurance policies in the manner it deems appropriate to give effect to this Section 7.06. Except as may be otherwise required in the Transaction Documents, from and after the Closing, Purchaser shall be responsible for securing all insurance it considers appropriate for the Subject Line, the Purchased Assets, the Assumed Liabilities, and the operations and Liabilities in respect thereof.

Section 7.07. Real Property Matters.

Conveyance of the Transferred Real Property shall be made by the Deed, which shall convey all of Seller's right, title and interest in the Transferred Real Property free and clear of any Encumbrances other than Permitted Encumbrances. In the event Purchaser is unable to record the Deed related to the Transferred Real Property due to state or local recording requirements (including as to subdivision, survey, legal description, perfection or opposability of Seller's rights in the Transferred Real Property) Purchaser shall be responsible for satisfying such state or local requirements at its sole cost and expense; *provided* that Seller shall provide any assistance reasonably requested by Purchaser at the expense and cost of Purchaser, including executing further documents or providing further information that may be necessary to record the Deed, including real estate transfer tax valuation forms required under applicable Law. Purchaser acknowledges and agrees that the conveyance of the Transferred Real Property shall be made subject to the Permitted Encumbrances which shall survive Closing:

Section 7.08. [Nondisclosure].

(a) The terms of the [Nondisclosure Agreement] are incorporated into this Agreement by reference and shall continue in full force and effect and the confidentiality obligations thereunder shall be binding upon Purchaser and its Representatives until the Closing, at which time the confidentiality obligations under the Nondisclosure Agreement shall terminate subject to the continuing obligations set forth herein. Notwithstanding the terms of the Nondisclosure Agreement, Purchaser may prior to the Closing disclose Confidential Information to existing or prospective lenders or equity investors of Purchaser who have a reasonable need to know such Confidential Information, are informed of the confidential nature of the information

and are subject to confidentiality obligations to Purchaser. Purchaser acknowledges and agrees that Purchaser shall be responsible for any breach of the terms of this Agreement or the Nondisclosure Agreement by such existing or prospective lenders or equity investors of Purchaser.

(b) Subject to Section 7.08(c), for a three-year period following the Closing, unless otherwise agreed to in writing by the other Party, each of Seller, on the one hand, and Purchaser, on the other hand, hereby agrees not to (and to cause its Representatives not to) (i) disclose any Confidential Information to any Person other than (A) its Representatives who need to know the Confidential Information for the purpose of the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, (B) public authorities for the purpose of recording the Deed, (C) the STB in connection with obtaining the STB Approvals, or (D) existing or prospective lenders or equity investors of such Party who (1) have a reasonable need to know the Confidential Information, (2) are informed of the confidential nature of the information and (3) are subject to confidentiality obligations to such Party, and (ii) use any

Confidential Information for any purpose other than as contemplated by this Agreement or any of the other Transaction Documents. Each Party shall be responsible for any breach of the terms of this Agreement by its Representatives or existing or prospective lenders or equity investors who receive Confidential Information.

(c) If a Party or its Representative (the "Disclosing Party") determines, based upon the advice of its legal counsel, that it is required by applicable Law, by applicable stock exchange regulation, by legal process, or for the purposes of enforcement of its rights under this Agreement, to disclose all or any portion of the Confidential Information, the Disclosing Party may so disclose such Confidential Information; *provided* that the Disclosing Party shall, to the extent permitted by Law, (i) provide the other Party with a written notice of such requirement so that the other Party may seek a protective order or other appropriate remedy to the extent applicable; (ii) exercise commercially reasonable efforts to narrow the scope of any such disclosure and consult with the other Party regarding the scope of such disclosure; and (iii) if such protective order or other remedy is not obtained, furnish only that portion of the Confidential Information which the Disclosing Party is compelled to disclose and exercise commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information to the extent applicable.

(d) If the transactions contemplated by this Agreement are not consummated, Purchaser shall (and shall ensure that its Representatives will) promptly, upon Seller's written request, and in any event within 20 Business Days of such request return or destroy all copies of Confidential Information in its possession or in the possession of any of its Representatives and return or destroy all information or other documents derived from such Confidential Information. Notwithstanding the foregoing, Purchaser (and its Representatives) shall be permitted, subject to their continued compliance with the obligations specified in this Section 7.08, to retain copies of any computer records and files containing such Confidential Information which have been created pursuant to its automatic electronic archiving and back up procedures and retain any Confidential Information to the extent required by Law. If so requested by Seller, Purchaser shall confirm in writing that its undertakings relating to the return or destruction of any such Confidential Information have been complied with.

(e) For purposes of this Agreement, "Confidential Information" means: (i) in relation to the obligations of Purchaser, any and all information related to Seller and/or its Affiliates and, prior to the Closing, the Purchased Assets[, the Leased Real Property] or the Assumed Liabilities received or held by Purchaser or its Representatives, but shall not include any and all information related to the Purchased Assets[, the Leased Real Property] or the Assumed Liabilities following the Closing, whether oral or written; (ii) in relation to the obligations of Seller, any and all information related to Purchaser, and/or its Affiliates and, following the Closing, the Purchased Assets[, the Leased Real Property] or the Assumed Liabilities, received or held by Seller or its Representatives, whether oral or written; and (iii) any of the terms, conditions or content of the discussions between the Parties with respect to, and the existence and the terms of, this Agreement and the other Transaction Documents; *provided*, *however*, that Confidential Information shall not include any information that: (A) is or becomes generally available to the public other than as a result of a disclosure by that Party or any of its Representatives in violation of this Section 7.08; (B) was lawfully in the possession of that Party or any of its Representatives prior to such information being received from the other Party or its Representatives free of any

restriction as to its use and disclosure (as can be demonstrated by that Party's or its Representative's written records); (C) becomes available to that Party or any of its Representatives thereafter; *provided* that, at the time of its receipt, such information is not, to the Knowledge of that Party, subject to any confidentiality or restricted-use obligation for the benefit of the other Party; and/or (D) is independently developed by that Party or any of its Representatives without reference to the other Party's Confidential Information (as can be demonstrated by that Party's or its Representative's written records).

Section 7.09. Removal of Seller Marks.

No interest in or right to use any Intellectual Property, trademarks, trade names and trade dress of Seller or any of its Affiliates (the "Seller Marks") is being, or will be, assigned, transferred or otherwise conveyed to Purchaser pursuant to this Agreement or the transactions contemplated hereby. As promptly as practicable following the Closing Date, but in no event later than 30 days after the Closing Date, Purchaser shall remove, permanently obliterate, cover or otherwise stop displaying all Seller Marks in or on any signage, tools, dies, equipment, real estate or other durable items included in the Purchased Assets.

Section 7.10. Surface Transportation Board.

Purchaser shall prepare such documents or filings (in addition to the Responsive Application filed by Purchaser in Finance Docket No. 36873 (Sub-No. [●])), if any, as may be required to secure STB Approval, or exemption from approval, of the transactions contemplated by this Agreement. In preparing such filings, the Parties shall cooperate fully with each other and shall furnish to the others such necessary information and reasonable assistance as the other may reasonably request in connection with the preparation of any such required STB filings.

Section 7.11. FCC Radio Licenses.

Purchaser and Seller shall cooperate to obtain the consent of the FCC pursuant to 47 U.S.C. § 310(d) and 47 C.F.R. § 1.948 for the assignment of FCC Licenses. Promptly following execution of this Agreement, but not later than five Business Days following execution of this Agreement, Seller shall initiate the electronic filing of a FCC Form 603, "FCC Application for Assignments of Authorization or Transfers of Control," through the FCC's Universal Licensing System, for each FCC License and shall be responsible for the filing fees associated with such applications. Purchaser shall electronically approve and sign the FCC Form 603 applications through the Universal Licensing System and shall, within 30 days after the Closing Date, notify the FCC of the consummation of the transfer of control of each FCC License through the filing of FCC Form 603, Schedule D.

Section 7.12. Notice Regarding Changes.

Prior to the Closing Date, Seller shall promptly inform Purchaser in writing of (a) the receipt of a written or oral notice from any counterparty that they intend to terminate, not renew, or renegotiate the terms of an Assigned Contract, (b) any event, change or circumstance that could reasonably result in a Material Adverse Effect, and (c) any change in facts and circumstances that could render any of the representations and warranties made herein by Seller inaccurate or misleading if such representations and warrantieshad been madeupon the occurrence of the fact or circumstance in question. Purchaser shall promptly inform Seller in writing of any

change in facts and circumstances that could render any of the representationsand warranties made herein by Purchaser inaccurateor misleading if such representations and warrantieshad been made upon the occurrence of the fact or circumstance in question.

Section 7.13. Employment.

Purchaser shall have the right but not the obligation and shall not otherwise have the responsibility or obligation to absorb, hire, or otherwise employ any employees of Seller that may or will be dismissed or displaced as a result of implementing the transaction contemplated by this Agreement, except as may be required by the STB. In the event Purchaser hires any employees for the continued operation of the Subject Line, Purchaser agrees to offer priority hiring consideration to Seller employees (both craft and non-craft) working on the Subject Line whose employment is impacted by Purchaser acquiring the Subject Line on the Closing Date.

ARTICLE VIII.
CONDITIONS PRECEDENT TO OBLIGATIONS OF THE PARTIES

Section 8.01. Conditions to Each Party's Obligations to Close.

The respective obligations of Seller and Purchaser to effect the Closing and to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver at or prior to the Closing of the following conditions:

(a) No Governmental Order or Proceedings. There shall not be in force any Governmental Order to and there shall be no Proceeding pending, or to Seller's Knowledge threatened by any Governmental Authority (other than the STB, which shall be governed by Section 8.01(b)) that seeks to, enjoin or prohibit the transactions contemplated by this Agreement or any other Transaction Documents;

(b) STB Approvals. The STB Approvals shall have been obtained and become final and effective and otherwise be in full force and effect.

(c) FCC Approvals. The FCC Approvals shall have been obtained and become final and effective and otherwise be in full force and effect.

(d) No Law. No Governmental Authority shall have enacted, issued or promulgated any Law which has the effect of (i) making any of the transactions contemplated by this Agreement illegal, or (ii) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement (including any STB order approving an inconsistent application with respect to any of the transactions contemplated by this Agreement, or otherwise directing Seller to divest all or a portion of the Purchased Assets to a Person other than Purchaser).

Section 8.02. Conditions to Obligations of Purchaser to Close.

The obligation of Purchaser to effect the Closing is subject to the satisfaction (or waiver by Purchaser) at or prior to the Closing of the following additional conditions:

(a) Representations and Warranties. The Fundamental Representations of Seller shall be true and correct in all respects as of the Closing Date and the representations and

warranties of Seller contained in ARTICLE V (other than the Fundamental Representations of Seller) shall be true and correct in all material respects as of the Closing Date (without regarding to any express qualifier therein as to materiality);

(b) Performance of Obligations of Seller. The covenants and agreements of Seller to be performed on or before the Closing Date in accordancewith this Agreement shall have been performed in all material respects;

(c) Officer's Certificate. Purchaser shall have received a certificate, dated as of the Closing Date and signed on behalf of Seller by an executive officer of Seller, stating that the conditions specified in Section 8.02(a) and Section 8.02(b) have been satisfied;

(d) Seller Closing Deliveries. Seller shall have delivered those instruments and performed those actions set forth in Section 4.03;

(e) Purchaser shall have received prior written approval from its managers or members validly authorizing and approving the transactions contemplated by this Agreement; and

(f) no Proceeding shall have been initiated against Seller by any Person (other than Purchaser or any of its Affiliates), arising by reason of the acquisition of the Purchased Assets pursuant to this Agreement, which could reasonably be expected to restrain, prohibit or invalidate the consummation of the transactions contemplated by this Agreement and that remains in effect at the time of the Closing.

Section 8.03. Conditions to Obligations of Seller to Close.

The obligation of Seller to effect the Closing is subject to the satisfaction (or waiver by Seller) at or prior to the Closing of the following additional conditions:

(a) Representations and Warranties. The Fundamental Representations of Purchaser shall be true and correct in all respects as of the Closing Date and the representations and warranties of Purchaser contained in ARTICLE VI (other than the Fundamental Representations of Purchaser) shall be true and correct in all material respects as of the Closing Date (without regarding to any express qualifier therein as to materiality);

(b) Performance of Obligations of Purchaser. The covenants and agreements of Purchaser to be performed on or before the Closing Date in accordance with this Agreement shall have been performed in all material respects;

(c) Purchaser Officer's Certificate. Seller shall have received a certificate, dated as of the Closing Date and signed on behalf of Purchaser by an executive officer of

Purchaser, stating that the conditions specified in Section 8.03(a) and Section 8.03(b) have been satisfied; and

(d) Purchaser Closing Deliveries. Purchaser shall have delivered those instruments and performed those actions set forth in Section 4.04.

Section 8.04. Frustration of Closing Conditions.

Neither Purchaser nor Seller may rely on the failure of any condition set forth in this ARTICLE VIII to be satisfied if such failure was caused by such Party's failure to act in good faith or to use the requisite efforts to cause the Closing to occur as required by this Agreement, including the requirements of Section 7.01.

ARTICLE IX.
TERMINATION; EFFECT OF TERMINATION

Section 9.01. Termination.

Anything to the contrary in this Agreement notwithstanding, this Agreement may be terminated and the transactions contemplated by this Agreement abandoned at any time prior to the Closing:

(a) by mutual written consent of Seller and Purchaser; or

(b) by Purchaser, if any of Seller's representations and warranties contained in ARTICLE V of this Agreement shall fail to be true and correct or Seller shall have breached or failed to perform in any material respect any of its covenants or other agreements contained in this Agreement, and such failure or breach would give rise to the failure of a condition set forth in Section 8.02(a) or Section 8.02(b) and has not been cured by the date that is 10 days after the date that Purchaser has notified Seller in writing of such failure or breach; *provided* that Purchaser is not then in breach of any of its representations, warranties, covenants or agreements contained in this Agreement such that the conditions set forth in Section 8.03(a) or Section 8.03(b) would fail to be satisfied.

Section 9.02. Effect of Termination.

If this Agreement is terminated and the transactions contemplated by this Agreement are abandoned as described in Section 9.01, this Agreement shall become null and void and of no further force and effect, except for the provisions of Section 7.03, Section 7.08, this ARTICLE IX and ARTICLE XI. Nothing in this Section 9.02 shall be deemed to release any Party from any Liability for Fraud or willful breach by such Party of the terms and provisions of this Agreement. For purposes of this Agreement, "willful breach" means a material breach or failure to perform that is the consequence of an act or omission of a Party with the knowledge that such act or omission would, or would be reasonably expected to, cause a material breach of this Agreement.

Section 9.03. Notice of Termination.

In the event of termination by Purchaser pursuant to Section 9.01(b), written notice of such termination shall be given by Purchaser to Seller in the manner set forth in Section 11.01.

ARTICLE X.
SURVIVAL, INDEMNIFICATION AND REMEDIES

Section 10.01. Survival.

All representations and warrantiesmade by each party in this Agreement and in any certificate delivered in connection herewith shall survive the Closing until the third anniversary of the Closing Date; *provided, however*, that the representations and warranties set forth in (a) Section 5.01, Section 5.02, Section 5.08(c), Section 5.14, Section 6.01, Section 6.02 and Section 6.06 (the "Fundamental Representations") shall survive indefinitely, (b) Section 5.09 and Section 5.16 shall survive the Closing until the fourth anniversary of the Closing Date and (c) Section 5.10 shall survive the Closing until the date that is 60 days following the expiration of the statute of limitations applicable to any claim arising in respect thereof (including any extensions thereof). All representations and warranties related to any claim asserted in writing prior to the expiration of the applicable survival period shall survive(but only with respect to such claim) until such claim shall be resolved and payment in respect thereof, if any is owing, shall be made. Notwithstanding anything to the contrary contained herein, any claim that a party committed Fraud shall survive until the expiration of the applicable statute of limitations. The survival periods set forth above in this Section 10.01 are intended to replace and supersede any applicable statute of limitations to bring a Proceeding even though the survival period may be shorter or longer than otherwise provided by applicable Law.

Section 10.02. Indemnification.

(a) Seller shall indemnify, defend, reimburse and hold harmless Purchaser and its Representatives, Affiliates, and their respective successors and assigns (the "Purchaser Indemnified Parties") against and with respect to any and all demands, claims, obligations, complaints, actions or causes of action, suits, Proceedings, investigations, arbitrations, assessments, losses, damages, fines, penalties, liabilities, judgments, settlements, costs and expenses (including reasonable attorneys' fees) (collectively, "Losses") (including any Losses based on claims for breach of contract, warranty, tortious conduct (including negligence) or otherwise and whether predicated on common Law, statute, strict liability, or otherwise) arising from, in connection with or with respect to the following items:

(i) any breach or misrepresentation of a representation or warranty by Seller contained in this Agreement, any certificate delivered in connection herewith or any other Transaction Document;

(ii) any breach or failure to fulfill any agreement or covenant on the part of Seller;

(iii) any Encumbrances other than Permitted Encumbrances;

(iv) any Labor Protective Conditions imposed for the benefit of Seller's employees;

(v) any pre-Closing violations of, and non-compliance with, FCC regulations with respect to the maintenance and use of radio frequency licenses currently held by Seller with respect to the Purchased Assets (including the payment of any fine or penalty, and the satisfaction of any condition, imposed by the FCC on account of such violations or non-compliance); and

(vi) any Excluded Liabilities.

(b) Purchaser shall indemnify, defend and hold harmless Seller and its Representatives, Affiliates and assigns (the "Seller Indemnified Parties") against and with respect to any and all Losses, arising from, in connection with or with respect to the following items:

(i) any breach or misrepresentation of a representation or warranty by Purchaser contained in this Agreement or an certificate delivered in connection herewith;

(ii) any breach or failure to fulfill any agreement or covenant on the part of Purchaser;

(iii) any Labor Protective Conditions imposed for the benefit of Purchaser's employees; and

(iv) any Assumed Liabilities.

(c) Notwithstanding anything to the contrary contained in this Agreement, (i) Seller shall not have any obligation to indemnify, defend and hold harmless any Purchaser Indemnified Party pursuant to Section 10.02(a)(i) (A) unless the aggregate amount of Losses incurred by the Purchaser Indemnified Parties exceeds $**[●]** (the "Threshold Amount") at which point, Seller shall indemnify, defend and hold harmless the Purchaser Indemnified Parties for the full amount of such Losses and (B) except as provided in clause (iii) below, in excess of $**[●]** (the "Cap"), (ii) Purchaser shall have no obligation to indemnify any Seller Indemnified Parties pursuant to Section 10.02(b)(i) (A) unless the aggregate amount of Losses incurred by the Seller Indemnified Parties exceeds the Threshold Amount, at which point Purchaser shall indemnify Seller Indemnified Parties for the full amount of such Losses and (B) in excess of the Cap, and (iii) the parties acknowledge that the Threshold Amount and the Cap shall not apply to any Losses resulting from (A) Fraud, (B) breaches or misrepresentations of the Fundamental Representations, (C) any Adjustment Amount or (D) any indemnification obligations of the parties hereto (other than as set forth in Section 10.02(a)(i) and Section 10.02(b)(i)).

(d) Any Purchaser Indemnified Party or Seller Indemnified Party seeking indemnification hereunder (the "Indemnified Party") shall promptly give to the party obligated to provide indemnification to such Indemnified Party (the "Indemnitor") a written notice (a "Claim Notice"); *provided, however*, that the failure of any Indemnified Party to give the Claim Notice promptly as required by this Section shall not affect such Indemnified Party's rights under this

Section 10.02 unless and only to the extent that such failure actually prejudices the Indemnitor. The Claim Notice shall provide reasonable detail of the claims being asserted.

(e) After the giving of any Claim Notice pursuant hereto, the amount of indemnification to which an Indemnified Party shall be entitled under this Section 10.02 shall be determined: (i) by the written agreement between the Indemnified Party and the Indemnitor; (ii) by a final non-appealable determination of a court of competent jurisdiction pursuant to Section 11.06; or (iii) by any other means to which the Indemnified Party and the Indemnitor shall agree (a "Final Determination"). Subject to Section 10.03, all amounts due to the Indemnified Party shall be paid by wire transfer within 10 Business Days after such Final Determination.

(f) An Indemnified Party shall notify the Indemnitor in writing, and in reasonable detail, of any Proceeding commenced by any third Person against the Indemnified Party (a "Third Party Claim") promptly after receipt by such Indemnified Party of written notice of the Third Party Claim. Notwithstanding the foregoing, should a party be physically served with a complaint with regard to a Third Party Claim, the Indemnified Party must deliver a copy of the complaint to the Indemnitor within 10 days after the receipt of such complaint; *provided, however*, that the failure of any Indemnified Party to give such notice shall not affect such Indemnified Party's rights under this Section 10.02 unless and only to the extent that such failure actually prejudices the Indemnitor.

(g) In the event of the initiation of any Proceeding with respect to a Third Party Claim (in which the only relief sought is monetary damages), the Indemnitor may elect, at its own expense, to be represented by counsel of its choice (reasonably acceptable to the Indemnified Party) and to control and defend such Third Party Claim. The Indemnified Party shall have the right to participate (and to retain legal counsel to participate) in any such defense at its sole cost and expense. The Parties hereto agree to cooperate fully with each other in connection with the defense, negotiation or settlement of any such Proceeding. Such cooperation shall include the retention and the provision of records and information that are reasonably relevant to such Third Party Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Indemnitor shall not settle or agree to the entry of a final order in any such Proceeding without the prior written consent of the Indemnified Party unless (i) the sole recourse under such settlement or final order is payment by the Indemnitor of monetary damages, (ii) such settlement or final order does not obligate the Indemnified Party to admit any liability, and (iii) such settlement includes a full and unconditional release of the Indemnified Parties.

(h) Any indemnification payment under this Agreement shall be considered an adjustment to the Purchase Price.

(i) This Section 10.02 constitutes the Indemnified Parties' sole and exclusive remedy for any and all Losses or other claims relating to or arising from this Agreement and the transactions contemplated hereby, except for claims based on Fraud. No Indemnitor shall have any indemnification, contribution, or other obligation for any Loss that the Indemnified Parties may suffer, and the Indemnified Parties shall have no remedies, with respect to (i) the subject matter of this Agreement or the transactions contemplated hereby or (ii) any other matter relating to Seller, prior to the Closing, the operation of its businesses prior to the Closing, or any other transaction

or state of facts involving the Purchased Assets or Seller prior to the Closing (including any common law or statutory rights or remedies), in each case, other than the provisions of this ARTICLE X, which are the Indemnified Parties' sole and exclusive remedies with respect thereto, except for claims based on Fraud.

Section 10.03. Expiration of Claims.

The ability of any Person to receive indemnification under Section 10.02 shall terminate on the applicable survival termination date (as set forth in Section 10.01), unless such Person shall have incurred a Loss and made a valid claim for indemnification pursuant to Section 10.02 prior to such termination date. If a Person has made a valid claim for indemnification pursuant to Section 10.02 prior to such termination date, such valid claim, if then unresolved, shall not be extinguished by the passage of the deadlines set forth in Section 10.01.

Section 10.04. Determination of Loss Amount.

The amount of any Loss subject to indemnification hereunder or of any claim therefor shall be calculated net of and shall be limited to the amount of such Loss that remains after deducting therefrom any insurance proceeds and any other indemnity, contribution or similar payment actually realized by and paid to the applicable Indemnified Parties in respect of any such claim, less any related costs and expenses, including the aggregate cost of pursuing any related insurance claims. The Indemnified Parties shall use commercially reasonable efforts to seek full recovery under all insurance policies or other such indemnity, contribution or similar agreements or sources of payment covering any Loss to the same extent as they would if such Loss were not subject to indemnification hereunder. Promptly after the realization of any such insurance proceeds, or other indemnity, contribution or similar payment, the Indemnified Parties shall reimburse the applicable Indemnitor for such reduction in Losses for which the Indemnified Parties was indemnified prior to the realized reduction of such Losses.

Section 10.05. Mitigation.

Each Person entitled to indemnification hereunder shall take all reasonable steps to mitigate all Losses after becoming aware of any event which could reasonably be expected to give rise to any Losses that are indemnifiable or recoverable hereunder or in connection herewith.

ARTICLE XI.
GENERAL PROVISIONS

Section 11.01. Notices.

All notices and other communications under this Agreement shall be in writing and shall be deemed given (a) when delivered personally by hand (with written confirmation of receipt), (b) on the day transmitted by electronic mail (with written confirmation of transmission), if sent before 5:00 p.m. Eastern Time on a Business Day, otherwise on the next Business Day following transmission, or (c) one Business Day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses (or to such other address as a Party may have specified by notice given to the other Party pursuant to this provision):

If to Seller:

[●]
[●]
[●]
Attention: [●]
Email: [●]

with a copy (which shall not constitute notice) to:

[●]
[●]
[●]
Attention: [●]
Email: [●]

If to Purchaser:

New Orleans Terminal Railroad, LLC
[●]
[●]
Attention: [●]
Email: [●]

with a copy (which shall not constitute notice) to:

[●]
[●]
[●]
Attention: [●]
Email: [●]

Section 11.02. Waiver.

No delay or failure on the part of any Party hereto in exercising any right, power or privilege under this Agreement or under any other instrument or document given in connection with or pursuant to this Agreement shall impair any such right, power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid against a Party hereto unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

Section 11.03. Benefit and Assignment.

No Party to this Agreement shall assign this Agreement, in whole or in part, whether by operation of Law or otherwise, without the prior written consent of the other Parties; *provided* that no such assignment shall relieve the assigning Party of its obligations hereunder.

Any purported assignment contrary to the terms hereof shall be null, void and of no force and effect. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Person other than the Parties hereto and their respective successors and permitted assigns is or shall be entitled to bring any action to enforce any provision of this Agreement against any of the Parties hereto, and the representations and warranties, covenants and other agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the Parties hereto or their respective successors and assigns as permitted hereunder. Notwithstanding the foregoing, Purchaser shall (subject to the terms of the STB Approvals) be entitled to assign all or any portion of its rights and liabilities hereunder to an Affiliate of Purchaser without consent of (but with notice to) Seller; *provided* that no such assignment shall relieve Purchaser of its obligations hereunder.

Section 11.04. Amendment.

No amendment, modification or supplement to this Agreement shall be binding unless executed in writing by all of the Parties hereto.

Section 11.05. Severability.

If any part of any provision of this Agreement or any other Transaction Document shall be invalid or unenforceable under applicable Law, such part shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of such provisions or the remaining provisions of this Agreement or any other Transaction Document.

Section 11.06. Governing Law; Waiver of Jury Trial; Submission to Jurisdiction.

(a) This Agreement, the rights and obligations of the Parties hereto, and any claims or disputes relating thereto, shall be governed by and construed under and in accordance with the Laws of the State of Delaware, without regarding to any choice of Law provision or rule of the State of Delaware that would otherwise result in the application of the Laws of any other State or jurisdiction.

(b) THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER NOW EXISTING OR HEREAFTER EXISTING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES HERETO AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS SECTION 11.06(B) WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT BETWEEN THE PARTIES HERETO IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY ACTION OR PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

(c) Each of the Parties agrees that any Proceeding with respect to this Agreement brought by a Party hereto or its successors or assigns shall be brought and determined in the Federal or state court sitting in the State of Delaware and each of the Parties hereby submits

with regard to any such Proceeding for itself and in respect to its property, generally and unconditionally, to the jurisdiction of the aforesaid courts. Each of the Parties hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim, or otherwise, in any Proceeding with respect to this Agreement, (i) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason, (ii) that it or its property is exempt or immune from jurisdiction of such court or from any legal process commenced in such court (whether through judgment or otherwise), and (iii) to the fullest extent permitted by applicable law that (A) the Proceeding in any such court is brought in an inconvenient forum, (B) the venue of such Proceeding is improper and (C) this Agreement, or the subject matter hereof, may not be enforced in or by any such court.

Section 11.07. Interpretation.

(a) When a reference is made in this Agreement to a Section, subsection, Exhibit or Schedule, such reference shall be to a Section, subsection, Exhibit or Schedule of this Agreement unless otherwise indicated. The headings contained in this Agreement, in any Schedules and in the table of contents to this Agreement, are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made part of this Agreement as if set forth in full herein. Any fact or item which is clearly disclosed on any Schedule to this Agreement in such a way as to make its relevance or applicability to information called for by another Schedule or Schedules to this Agreement reasonably apparent on the face of the disclosure shall be deemed to be disclosed on such other Schedule or Schedules, as the case may be, notwithstanding the omission of a specific reference or cross-reference thereto. Any capitalized term used in any Exhibit or Schedule and not otherwise defined shall have the meaning given to such term in this Agreement.

(b) Unless the context clearly requires otherwise, whenever the words "include", "includes", "including", "such as" or terms of similar meaning are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof", "herein", "hereby" and "hereunder" and terms of similar meaning when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The term "or" is not exclusive. The word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase shall not mean simply "if". The definitions contained in this Agreement are applicable to the singular as well as to the plural forms of such terms. Any agreement or instrument defined or referred to herein means such agreement or instrument as from time to time amended, modified or supplemented. References to a Person are also to its permitted successors and assigns. Pronouns of one gender shall include all genders. All accounting conventions shall be consistent with GAAP, unless otherwise specified. All references to "Dollars" or "$" shall be to U.S. Dollars unless otherwise specified. All references to "days" shall mean calendar days unless Business Days are specified. Unless otherwise specified herein, undefined terms shall be given the meaning customarily applied to such terms in the railroad industry in the United States.

Section 11.08. Signature in Counterparts; Electronic Delivery.

This Agreement may be executed in separate counterparts, none of which need contain the signatures of all Parties, each of which shall be deemed to be an original, and all of which taken together shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than the number of counterparts containing the respective signatures of, or on behalf of, each of the Parties. This Agreement, the other Transaction Documents and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto (in each case other than the Deed), to the extent delivered by means of a facsimile, email or electronic .pdf transmission (any such delivery, an "Electronic Delivery"), shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any Party hereto or to any such agreement or instrument, each other Party hereto or thereto shall re-execute original forms thereof and deliver them to the other Party. No Party hereto or to any such agreement or instrument shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such Party forever waives any such defense, except to the extent such defense related to lack of authenticity.

Section 11.09. Entire Agreement.

This Agreement, together with all Exhibits and Schedules hereto and the Transaction Documents, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, except for any prior agreements regarding obligations of Seller or an Affiliate or predecessor for the performance of and/or payment for Remedial Action identified on Section 3.02(b) of the Disclosure Schedules.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

SELLER:

Norfolk Southern Railway Company

By:_____
Name: [●]
Title: [●]

PURCHASER:

New Orleans Terminal Railroad, LLC

By:_____
Name: [●]
Title: [●]

LAND AND RAIL ASSETS LEASE AGREEMENT

This Land and Rail Assets Lease Agreement ("Agreement") made this _____ day of ___ 2027, (the "Execution Date"), is between Norfolk Southern Railway Company ("NS") and New Orleans Terminal Railroad, LLC ("NOTR"). NS and NOTR are herein referred to as "Parties".

WITNESSETH:

WHEREAS, NS, owns the line of railroad consisting of a line of railroad extending westward from Oliver Junction, milepost 7.9 NT in New Orleans, LA, to East City Junction at milepost 3.8 NT, and further from East City Junction at milepost 3.6 A to CN/IC Connection, milepost 0.0 A, a distance of approximately 7.7 miles and certain related assets shown on Exhibit A (the "Real Property"), together with the tracks, rails, ties, ballast, other track materials, switches, crossings, bridges, earthworks, retaining walls, tunnels, culverts, signals, crossing warning devices, communications lines, poles, auxiliary tracks, and any and all improvements or fixtures affixed thereto (the "Rail Assets," and collectively with the Real Property, the "Line"); and

WHEREAS, the Parties desire to enter into this agreement whereby NS will lease its land and rail assets comprising the "Line" as set forth herein.

NOW, THEREFORE, in consideration of the premises, the mutual covenants, and the other good and valuable consideration set forth herein, NS and NOTR agree as follows:

1. PROPERTY COVERED.

1.1 Except as otherwise provided herein and subject to the Reserved Rights and the terms and conditions hereof, NS hereby leases the Real Property, as generally shown in Exhibit A and more particularly described in Exhibit A-1, to NOTR effective on the Commencement Date, as defined in Section 6 hereto, provided that the Real Property shall be leased in its "AS IS, WHERE IS" CONDITION AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF TITLE, MERCHANTABILITY,

HABITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NOTR acknowledges that it will have had the opportunity to inspect the Line prior to the Commencement Date and accepts it in its current condition and NOTR deems it appropriate for all purposes, including NOTR's intended use. NOTR leases the Real Property subject to the terms and conditions of this Agreement and all existing agreements, encroachments, claims, easements, occupancies, grants, reservations, deed obligations and similar covenants, rights, title defects and other impediments, whether or not recorded and whether or not this Agreement provides actual notice thereof, including without limitation, any rights of the National Railroad Passenger Corporation by operation of law or otherwise. Specifically excluded from the Real Property are all parcels identified in Exhibit A-2, Excluded Surplus Parcels.

1.2 Except as otherwise provided herein, during the Term of this Agreement, NOTR shall have the exclusive right to conduct rail freight operations on the Line, provided that NOTR may grant operating rights over the Line to any other carrier or third party; provided, further, that NOTR shall have the right, without the approval of NS, to interchange traffic with any connecting carrier, including NS, at any existing or future point of connection on or adjacent to the Line. In addition, NS shall not grant to any third party any rights whatsoever to conduct rail freight operations on the Line. Any movement of NS traffic over the Line shall be governed by a separate agreement between the Parties ("Overhead Traffic Agreement").

2. RIGHT TO POSSESSION.

On the Commencement Date, NS shall deliver NOTR possession of the Real Property and Rail Assets for NOTR's lease, respectively, and operation; provided, however, that NS will have three (3) months after the Commencement Date in which to identify and remove, at its sole expense and without unreasonable interference to NOTR's operations, all inventories and personal property of NS located on, but not affixed to, the Real Property as of the Commencement Date, which inventories and personal property are or will be more particularly described on Exhibit C within said three (3) month period. Any such property which NS fails to remove during such period, other than operating equipment, locomotives or other rolling stock which NS may remove at any time, shall be treated as additional assets pursuant to Section 9 and Exhibit D.

3. TERM.

3.1 General. This Agreement will continue for a period of fifteen (15) years from the Commencement Date (the "Initial Term") plus mutually agreeable extensions (collectively, the "Term"). Subject to the satisfaction of any applicable regulatory authority with requisite jurisdiction over any extension, the Initial Term will be automatically extended for a period of ten (10) years.

3.2 If the Initial Term is extended as provided for in Section 3.1, then at the conclusion of that extension, the Term may be extended for an additional period of five (5) years if, and only if, the Parties reach a mutually acceptable agreement on the terms and conditions of such extension, subject to the satisfaction of any applicable regulatory authority with requisite jurisdiction

over any extension.

3.3 Material Breach. This Agreement may be terminated by the non-breaching party if either NOTR or NS breaches any one or more of the material covenants or obligations under this Agreement and if such breach continues without cure for a period of ten (10) calendar days, in the case of a failure to pay rent, or thirty (30) calendar days, in the case of any other material breach, from the date of receipt of written notice of such breach.

3.4 A breach of a material covenant or obligation includes, but is not limited to, the following:

3.4.1 failure of NOTR to pay any sum due to NS under this Agreement;

3.4.2 failure of NOTR to carry NS-mandated minimum insurance as defined in Section 28 of this Agreement;

3.4.3 failure of NOTR to maintain the Line as required by this Agreement;

3.4.4 NOTR discontinues rail operations over all or any portion of the Line other than in accordance with Section 25 of this Agreement; or

3.4.5 NOTR, without authority from the Surface Transportation Board ("STB"), ceases rail operations on the Line.

3.5 Non-material Breach.

3.5.1 The party that breaches a non-material covenant or obligation under this Agreement shall cure the breach within sixty (60) calendar days of notice from the non-breaching party. If a cure of a non-material breach would reasonably take more than sixty (60) calendar days, the cure period shall be extended by the non-breaching party for a reasonable period of time subject to the consent of NS. The cure of a non-material breach shall be commenced promptly and be diligently pursued until completion.

3.5.2 If the non-breaching party reasonably deems that the breaching party has not complied with the terms of this Section 3, then termination of the Agreement will be effective upon the passage of the cure period provided herein and pursuant to the terms in Section 24.

4. RENT PAYMENTS.

4.1 **Annual Rent.**

4.1.1 The annual net rent amount shall be _____cash, payable, in advance, to be received by NS on or before the Commencement Date of this Agreement and each anniversary date of the Commencement Date. If such rent payment or any other amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to NS's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

4.1.2 The annual lease shall be adjusted on an annual basis by the same percentage of increase as reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1982-84=100) specified for All Items - United States compiled by the Bureau of Labor Statistics of the United States Department of Labor" ("CPI"). In no event, however, shall the adjusted rental be less than the previous year's rental. The rental shall be increased in accordance with the following:

Current Price Index*
- ---------- X Current Annual Rent = Adjusted Base Rental
Base Price Index**

* Effective CPI in the fourth month prior to the anniversary date of the Agreement.

** Effective CPI at the time of the effective date of the Agreement.

In the event the CPI is converted to a different standard reference base or otherwise revised or changed, the calculation of the percentage increase or decrease shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then as reasonably determined by NS.

4.2 Failure of NOTR to receive any bill for periodic rent, or receipt of a bill showing an incorrect rent, shall neither override the Agreement terms nor excuse or release NOTR from liability or responsibility for the correct rent. Limitation on collection for any erroneous billings or payments shall be three (3) years from the issuance of the erroneous bill or payment of the Agreement. In the event that NS is required to employ an attorney to collect the rent, NOTR agrees to reimburse NS for the cost of the attorney and other reasonable costs employed to successfully collect the rent upon receipt of a statement from NS.

4.3 Except as provided in Section 25.3, the rent stated in this Section shall be due irrespective of NOTR's discontinuance or cessation of use of any portion of the Line.

5. INSPECTION OF LINE.

NS (or its agent) shall have the right to inspect the Line upon giving twenty-four (24) hours' notice, and at such other times as it reasonably deems necessary to monitor compliance with this Agreement. NS shall have the right to enter the Line to conduct such inspections; however, NS will comply with any instructions of NOTR reasonably designed to insure the safety of the personnel and property of NOTR and NS. At NOTR's option, a representative of NOTR may accompany NS (or its agent) during the inspection, provided, however, that the NOTR representative does so at his or her own risk.

6. COMMENCEMENT DATE, STB REVIEW and LABOR.

6.1 In addition to any steps taken by NOTR prior to the Execution Date of this Agreement, NOTR, at its own cost and with NS's cooperation, shall promptly and expeditiously take all necessary steps to obtain the approval or exemption from the prior approval requirements of the STB of NOTR's lease and operation of the Line, which authority NOTR may seek through its responsive application in STB Finance Docket No. [_____], or which the STB may impose as a condition in that proceeding. NOTR shall be responsible for compliance with any requirements of the Interstate Commerce Commission Termination Act of 1995 (as may be amended from time to time, "ICCTA"), in connection with this Agreement. Each Party shall be solely responsible for any protective conditions or benefits imposed by any judicial, regulatory or governmental body, for the benefit of its own employees or the employees of any of its subsidiaries or affiliates, or who are otherwise required to be paid under its collective bargaining or other agreements, howsoever arising, including as a consequence of the approval or exemption of the transaction. Each Party shall defend, indemnify and hold harmless the other from and against any and all such liability, cost or expense.

6.2 Commencement Date. The "Commencement Date" shall be the date on which all STB authority required for NOTR's lease and operation of the Line has become effective, or such other date as the Parties may agree in writing or the STB may prescribe.

7. ADDITIONAL AGREEMENTS.

The Parties shall negotiate in good faith and enter into the following additional agreements on or before the Commencement Date, on terms consistent with this Agreement and any conditions imposed by the STB, and, failing agreement, on such terms as the STB may prescribe:

- Assignment and Assumption Agreement
- Transition Agreement
- Interchange Agreement
- Overhead Traffic Agreement

(with this Agreement, collectively, the "Definitive Agreements").

8. COMPLIANCE WITH LAWS.

8.1 NOTR shall provide notification to the Federal Railroad Administration ("FRA") pursuant to 49 C.F.R. §213.5(c) and §237.3 at least thirty (30) days

prior to any event requiring such notice and shall indemnify NS as against any penalties issued for failure to comply with this provision.

8.2 NOTR shall comply with all applicable Federal, State and local laws, ordinances and regulations in its use and operation of the Line.

9. ADDITIONAL ASSETS, MAINTENANCE, AND RAIL ASSETS.

9.1 In addition to leasing the Line, NS shall allow NOTR the right to use those certain assets listed on Exhibit D on the terms and conditions provided herein. NOTR shall have no right to dispose of any such assets, without prior written consent from NS, except for the disposition of salvage associated with maintenance, rehabilitation, upgrading or improvements. As NS remains the owner of such assets, NS shall be entitled to full monetary compensation for any such assets it authorizes to be removed and/or sold by NOTR except where such assets are replaced by NOTR with assets that are deemed equivalent in the reasonable judgment of NS, provided that all such replacements shall be the property of NS.

9.2 NOTR shall, at its sole risk, cost and expense, maintain the Line to at least the FRA class standard(s) applicable to the Line as shown on Exhibit D. Failure to maintain this standard after written notification of such failure from NS and a thirty (30) day cure period following such notice shall constitute a material breach.

9.3 Upon expiration or the earlier termination of this Agreement, NOTR, at its sole expense, shall return the Line to NS all at the same FRA class standard(s) and condition described in Exhibit D except for those areas where improvements to the assets were made.

9.4 Except as addressed below, NOTR may not make improvements upon or connected to the Line without the prior written consent of NS, provided that all such improvements approved by NS shall become the property of NS at the expiration of the Term.

9.4.1 NS makes no warranty or representation, either express or implied, as to the condition of track and NOTR accepts track as is. Any and all future improvements, repairs and maintenance of track thereof necessary for NOTR's use and operation thereof shall be performed by NOTR at NOTR's sole cost and expense. NOTR shall maintain all track that is not out of service to Class 2.

9.4.2 NOTR shall submit to NS a Capital Improvement Plan (CAPEX) for projects it wishes to perform in the following calendar year by November 1 of the preceding year for NS's review and approval. Upon NS's approval of the CAPEX, NOTR shall complete the work as approved unless changes are approved in writing by NS. CAPEX projects shall amortize at rate of ten percent (10%) per year. Should NOTR terminate this Agreement for cause as a consequence of a material breach by NS, any unrealized amortization that remains shall

be paid to NOTR within ninety (90) days after the date of termination.

10. PUBLIC FUNDS.

NOTR may apply for State and/or Federal Grants for the Line at its sole cost and expense. NOTR shall be solely responsible for any financial reimbursement or funding, unless NS voluntarily previously agreed in a separate agreement in writing to participate in such funding. NOTR acknowledges that NS is not making and makes no commitment to be a co-applicant to any grant request unless NS agrees to do so in writing.

11. SPECIAL AUDITS.

At any time, NS may perform a special audit if it has a reasonable belief that NOTR is not in compliance with this Agreement. The cost of the audit shall be borne by NS, provided that if such audit reveals NOTR is not in compliance with this Agreement, NOTR shall reimburse NS for the costs of the audit.

12. AUTHORITY TO LEASE.

It is a condition to the effectiveness of this Agreement that as of the Commencement Date, NOTR and NS will have the necessary corporate authority and approval to enter this Agreement and that any governmental agency having jurisdiction over the Line or the transaction shall have approved or exempted the transaction from any prior approval requirements concerning NOTR's lease of the Real Property and Rail Assets and operation of the Line. NOTR represents and warrants that as of the Commencement Date: (A) it has secured all requisite corporate and governmental authority to enter into this Agreement, lease the Real Property and Rail Assets and operate the Line; and (B) it has secured all requisite governmental authority to conduct common carrier railroad freight operations on the Line.

13. ENVIRONMENTAL.

13.1 Beginning on the Commencement Date, and throughout the Term, NOTR shall:

13.1.1 operate, and maintain the Real Property in compliance in all respects with any applicable Environmental Law and be responsible for making any notification or report concerning the Line or operating thereon required to be made by any applicable Environmental Law;

13.1.2 not enter any assignment or sublease, except on terms and conditions concerning environmental, health, and safety matters which are reasonably satisfactory to NS;

13.1.3 maintain in full force and effect all permits or approvals required by any applicable Environmental Law for the operation of the Line;

13.1.4 expeditiously cure at its own expense to the reasonable satisfaction of NS any violation of applicable Environmental Laws at the Line to the extent such violation is attributable to events or conditions which arose

on or after the Commencement Date and are the direct result of actions taken by NOTR;

13.1.5 not create or operate at the Line any (A) nuisance, (B) landfill or dump, or (C) hazardous waste management facility or solid waste disposal facility as defined by Environmental Law;

13.1.6 not manufacture, use, generate, transport, treat, store, release, dispose, or handle any hazardous substance on the Real Property except in the ordinary course of its business as of the Commencement Date, without the written permission of NS;

13.1.7 not subsidize, promote, or encourage any business that would ship or receive products characterized by the U. S. Department of Transportation as "Toxic Inhalation Hazards" or "Poison Inhalation Hazards" to locate facilities adjacent to or near the Line.

13.1.8 without regard to the foregoing Section 13.1.6, not use or store any chemicals, solvents or cleaners (including, without limitation, Trichloroethane [TCE], Trichloroethylene [TCA], Perchloro-ethylene [PERC], mineral spirits or similar materials identified by any other trade or brand name) that generate a hazardous waste when used;

13.1.9 within ten (10) business days notify NS in writing of and provide any reasonably requested documents upon learning of any of the following which arise in connection with the operation of the Line: any liability for response or corrective action, natural resource damage, or other harm pursuant to CERCLA, RCRA, or any comparable state law; any Environmental Claim; any violation of an Environmental Law or Release, threatened Release, or disposal of a hazardous substance; any restriction on the ownership, occupancy, use, or transferability arising pursuant to any (A) Release, threatened Release, or disposal of a hazardous substance or (B) Environmental Law; or any environmental, natural resource, health, or safety condition which could impair the condition of the Line;

13.1.10 conduct expeditiously at its expense to the reasonable satisfaction of NS and in accordance with any applicable Environmental Law response action necessary to remove, remediate, clean up, or abate any Release, threatened Release, or disposal of a hazardous substance attributable to events or conditions which arose on or after the Commencement Date; upon the written request of NS, timely provide at NOTR's expense a report of an environmental assessment of reasonable scope, form, and depth (including, where appropriate, invasive soil or groundwater sampling) by a consultant reasonably approved by NS as to any matter to the extent such matter arises during the lease Term and for which notice is provided pursuant to the above requirements. If such a requested environmental report is not delivered within seventy-five (75) days after receipt of NS's request, then NS

may arrange for same. The reasonable cost of any assessment arranged for by NS pursuant to this provision shall be payable by NOTR on demand;

13.1.11 allow NS or its representatives from time to time at NS's reasonable discretion and expense to inspect the Real Property and conduct an environmental audit or assessment (including invasive soil or groundwater sampling), including, without limitation, to facilitate any other sale or lease of the Real Property;

13.1.12 remove from the Real Property at NOTR's expense by the termination date any hazardous substances or equipment to manufacture, generate, transport, treat, store, Release, dispose or handle any hazardous substance used by NOTR or in the course of NOTR's business; and

13.1.13 provide NS financial assurances adequate to secure the eventual satisfaction of any of NOTR's obligations pursuant to this Section which have not been satisfied as of the termination date.

13.2 NOTR shall exercise due care in its use and operation of the Real Property, including taking precautions against foreseeable acts or omissions of any third party, to prevent the Release of a Hazardous Substance.

13.3 NOTR shall be responsible to NS and shall defend, indemnify and hold harmless NS, and its parent corporations, subsidiaries and affiliates, and all of its and their directors, officers, agents or employees, from and against any costs which at any time or from time to time may be claimed, suffered or incurred in connection with Environmental Contamination occurring after the Commencement Date, any Environmental Claim arising from conditions that occur or activities conducted after the Commencement Date, violation after the Commencement Date of any Environmental Law, or the breach of any provision of Section 13.1 or 13.2. This obligation to indemnify NS shall survive the Term of this Agreement.

13.4 NS shall be responsible to NOTR and shall defend, indemnify and hold harmless NOTR, and its parent corporation, subsidiaries and affiliates, and all of its and their directors and officers, agents or employees from and against any costs which at any time or from time to time may be claimed, suffered or incurred in connection with Environmental Contamination as of the Commencement Date, any Environmental Claim arising from conditions that existed or activities that were conducted on or before the Commencement Date, or the violation before the Commencement Date of any requirement of Environmental Law. The obligation to indemnify NOTR shall survive the Term of this Agreement.

13.5 As to the provisions of this Section 13 only, NOTR and NS waive any statute of limitations defense, provided, however, that if one party gives the other party written notice of Environmental Contamination of the Line, the waiver of the statute of limitations shall cease, but only as to the Environmental Contamination which is the subject of the written notice, and as to such contamination, the parties shall then be subject from the date of receipt of such written notice to the times then provided in

the then-applicable statute of limitations. The waiver of statute of limitations for any matter not covered in said written notice shall continue.

13.6 For purposes of this Section,

13.6.1 "Costs" means all liabilities, losses, costs, damages, punitive damages, Natural Resource damages, expenses, claims, diminution in value, attorneys' fees, experts' fees, consultants' fees, penalties, fines, obligations, judgments and disbursements, as well as expenses of Remediation and any other remedial, removal, response, abatement, cleanup, legal, investigative, monitoring, or record keeping costs and all expenses related thereto, whether incurred voluntarily or mandated by Requirements of Environmental Law.

13.6.2 "Disposal" (or "disposed") shall have the meaning specified in RCRA.

13.6.3 "Environmental Claim" means any claim, loss, injury, demand, action, cause of action, suit or other legal or administrative proceeding which seeks to impose or leads to the imposition of any Cost, damage assessment, punitive damage assessment, Natural Resource Damage, fine, penalty, expense, liability, lien, criminal liability, judgment, or investigation, whether governmental or private, relating in any way to:

(A) the improper use of wetlands or other protected land or wildlife; (B) noise; (C) pollution, contamination, damage, impairment, preservation, protection, Remediation or clean-up (on-site or off-site) of air, surface water, ground water, sediments, soil, wetlands or other Natural Resources; (D) the generation, handling, discharge, Release, threatened Release, treatment, storage, disposal or transportation of solid, gaseous or liquid waste; (E) the exposure, injury to, death of or threat to the health or safety of any person or persons or damage to the Real Property caused directly or indirectly by Hazardous Substances; (F) the manufacture, processing, , use, treatment, storage, disposal or Remediation of Hazardous Substances; (G) destruction caused directly or indirectly by Hazardous Substances or the Release of any Hazardous Substance; (H) the implementation of spill prevention plans relating to Hazardous Substances; (I) community right-to-know and other disclosure laws; (J) maintaining, disclosing or reporting information to governmental authorities under any Environmental Law; (K) proceedings to issue, modify, revoke or terminate an Environmental Permit; (L) failure to hold, maintain or comply with any Environmental Permit; or (M) compliance with Requirements of Environmental Laws, whether threatened, sought, brought, or imposed, that is related to or that in any way arises from the Real Property or operations conducted at the Line.

The term "Environmental Claim" shall also include any Cost incurred in responding to efforts to require Remediation and any claim based upon

any asserted or actual breach or violation of any Requirements of Environmental Laws, or upon any event, occurrence or condition as a consequence of which, any owner, operator or person having any interest in the Line, including, without limitation, any mortgagee of the Line or the beneficiary of any deed of trust of the Line, shall be liable with respect to any Environmental Claim or otherwise suffer any loss or disability, including without limitation, any restriction on use, ownership or transferability of the Line.

13.6.4 "Environmental Contamination" means any land, sediment, surface water, ground water, structure or location that has been contaminated or adversely affected by Hazardous Substances.

13.6.5 "Environmental Laws" or "Requirements of Environmental Laws" means any and all laws, rules, permits, regulations, ordinances, judgments, or orders now or hereafter in effect of any federal, state or local executive, legislative, judicial, regulatory or administrative agency, board or authority or any judicial or administrative decision relating thereto that could give rise to or form the basis for any Environmental Claim.

13.6.6 "Environmental Matters" means any matter, dispute, proceeding or obligation of any nature falling within the scope of this Section 13.

13.6.7 "Environmental Permits" means any permit, license, registration, waste identification number, approval or other authorization relating to business activities or operations on the Line required by any Environmental Law.

13.6.8 "Governmental Authority" means any federal, state or local government or any subdivision, agency, instrumentality, authority, department, commission, board or bureau thereof or any federal, state or local court or tribunal.

13.6.9 "Hazardous Substances" means (A) those substances included within the statutory and/or regulatory definitions of "hazardous substance," "hazardous waste," "extremely hazardous substance," "regulated substance," "contaminant," "hazardous materials" or "toxic substances," under any Environmental Law, (B) those substances listed in 49 C.F.R.172.101 and in 40 C.F.R. Part 302; (C) any material, waste or substance which is (i) petroleum, oil or a fraction thereof, (ii) asbestos or asbestos containing material, (iii) polychlorinated biphenyls, (iv) formaldehyde,(v) designated as a "hazardous substance" pursuant to 33 U.S.C. §321 or listed pursuant to 33 U.S.C. §317, (vi) explosives, (vii) radioactive materials (including naturally occurring radioactive materials), (viii) chemicals used to treat or coat wood or wood that has been so treated or coated, or (ix) Solid Wastes; (D) radon gas in an ambient air concentration exceeding four picocuries per liter (4 pCi/l); (E) such other substances, materials, or

wastes that are or become classified or regulated as hazardous or toxic under any federal, state or local law or regulation.

13.6.10 "Natural Resources" shall have the meaning specified in CERCLA.

13.6.11 "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C.
§ 6901, et. seq.

13.6.12 "Release" (or "released") shall have the meaning specified in CERCLA.

13.6.13 "Remediation" means a type of action required by a Governmental Authority or necessary to ensure compliance with the Requirements of Environmental Law, including by way of example (A) the removal and disposal or containment (if containment is practical under the circumstances and is permissible within Requirements of Environmental Law) or monitoring of any and all Hazardous Substances at the Line; (B) the taking of reasonably necessary precautions to protect against the Release or threatened Release of Hazardous Substances at, on, in, about, under, within or near the air, soil, surface water, groundwater or soil vapor at the Line or any public domain affected by operations on the Line or any surrounding areas thereof; (C) any action necessary to mitigate damage to wetlands, pinelands or other protected land or reclaim the same or to protect and preserve wildlife species; (D) any action necessary to meet the requirements of an Environmental Permit; (E) any action required to satisfy Requirements of Environmental Law; and (F) any action required to redress or restore damages to or achieve restoration of Natural Resources as a result of Releases from the operation of the Line.

13.6.14 "Solid Waste" shall have the meaning ascribed to it in RCRA.

13.7 Track Leases, Public/Private Road/Pedestrian Crossings, Private Sidetracks and short-term Rights-of-Entry. NOTR shall hereby solely be responsible for the approval and preparation for new track lease agreements, private sidetrack agreements on the Line, and short-term (one year or less) Rights-of-Entry Agreements for access to the property associated with surveys (property boundaries or geotechnical surveys) or bridge inspections (visual inspection only) and public/private road/pedestrian crossing agreements, whether overhead, underpass or at grade. However, NOTR shall not enter into any new agreements for public/private road/pedestrian crossings without the prior written consent of NS and NS's approval of the plans. NOTR shall reimburse NS Two Hundred Fifty Dollars ($250.00) for the cost of each review of plans. Any new agreement prepared for the purposes stated in this Section shall be prepared in the form of a sublease/sublicense subject to the terms of this Agreement, and a copy of each executed agreement shall be promptly forwarded to NS.

13.8 NOTR shall not, without the prior written consent of NS and full execution of an amendment or other agreement covering the same, allow the placement of any permanent structures on NS's property, and shall not grant any type of permanent access/occupancy to NS's property.

13.9 NOTR's use of the Line, and third party uses authorized hereunder by NOTR, shall be for railroad operations only and for no other purpose.

13.10 Pools. Subject to the terms of this Agreement, NOTR may enter into contracts for the joint use and pooling of equipment.

13.11 Assignment of Certain of NS's Contracts. During the Term of this Agreement and pursuant to the form of Assignment and Assumption Agreement attached hereto as Exhibit E, NS has or shall assign to NOTR and NOTR has or shall assume from NS those certain agreements listed in Exhibit E. In the event of any assignment or transfer of this Agreement or the Line that relate to any assigned agreement, the assignee or transferee shall assume all such agreements and obligations as a condition of the assignment or transfer of this Agreement or the Lease. NS may, in its reasonable discretion, amend Exhibit E to add or remove agreements therefrom that do not relate to the Line or do not relate to NOTR's continuing freight operations thereon. Upon expiration or other termination of this Agreement, such assignment and assumption shall cease and the agreements listed therein shall revert to NS. In the event that assignment of any such agreement requires the consent of the counterparty or any other third party, at the request of NS, it shall be the responsibility of NOTR to secure such consent. In the event NOTR is unable to obtain such consent, NS and NOTR shall make such arrangement between themselves at NOTR's expense as may be necessary to accomplish the same result as would have occurred had consent been obtained.

13.12 Assignment. NOTR shall not assign this Agreement without the prior written consent of NS, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that NOTR may, without the consent of NS but subject to any required STB authority, (A) assign this Agreement to any entity controlling, controlled by or under common control with NOTR, or to any successor to all or substantially all of NOTR's assets or business, and (B) collaterally assign this Agreement to a Leasehold Mortgagee as provided in Section 22.1. A change in the direct or indirect ownership or control of NOTR shall not constitute an assignment of this Agreement. Any assignee (other than a Leasehold Mortgagee prior to succeeding to NOTR's interest) shall assume NOTR's obligations hereunder in writing.

14. SOLE BENEFIT.

This Agreement is intended for the sole benefit of the parties hereto. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation, or other entity, other than the parties hereto and their respective officers, agents, employees, parent corporation, subsidiaries, affiliates, successors, and permitted assigns, any right or benefit

pursuant to any provision or term of this Agreement, and all provisions and terms of this Agreement are and will be for the sole and exclusive benefit of the parties to this Agreement.

15. WAIVER.

Any waiver at any time by one party of a breach hereof by the other party will extend only to the particular breach so waived and will not impair or affect the existence of any provision, condition, obligation, or requirement of this Agreement or the right of either party hereto thereafter to avail itself of any rights under this Agreement with respect to a subsequent breach.

16. ENTIRE AGREEMENT.

This Agreement includes Exhibits appended hereto and, together with any other written agreement between the Parties and referenced herein, represents the entire understanding of the Parties with respect to the subjects hereof, and to that extent supersedes any prior understandings, written or oral.

17. NOTICES.

All notices required to be given under this Agreement shall be in writing, signed by or on behalf of the party giving the same, and transmitted to the addresses shown on Exhibit H or such successor addresses as that party may specify by notice hereunder.

18. HEADINGS.

The headings of the Sections of this Agreement are inserted for convenience only and are not intended to govern, limit or aid in the construction of any term or provision of this Agreement.

19. TAXES.

19.1 NOTR shall be responsible for and pay or indemnify NS upon NS's written demand for all sales and use taxes, transfer taxes, gross receipts taxes, license fees, levies and assessments, ad valorem taxes and property taxes, (together including interest and penalties thereon referred to as "Tax" or "Taxes") relating to, the Line or to this Agreement (including, but not limited to, the rentals paid hereunder or the conveyance of property contemplated hereunder as set forth in Exhibit B-1). NS shall be responsible for any taxes allocable to NS's "Reserved Rights."

19.2 All Taxes in the nature of ad valorem or property taxes relating to the Real Property or operation of the Line will be prorated for the first year of the Agreement as of the Commencement Date and be paid by NOTR in total thereafter; provided, however, that if this Agreement is terminated for reasons other than a breach of its terms by NOTR, the foregoing items shall be prorated for the final year of this Agreement as of the date of termination. After the Commencement Date and during the Term of this Agreement,

NOTR shall prepare and file any and all returns required for and will pay when due, and prior to the imposition of any penalty, all Taxes in the nature of ad valorem or property taxes which may become a lien against the Line, and will indemnify NS against any liability for payment of such Taxes. NOTR shall provide to NS copies of all returns filed and payments made in satisfaction of NOTR's obligation under this Section 19.2.

19.3 If NS receives notice from any taxing jurisdiction claiming that NS is liable for any Tax for which NOTR has agreed to make payment under this Section 19, NS shall so notify NOTR in writing of such claim, and NOTR shall promptly pay or indemnify NS the amount of such Tax no later than fifteen (15) days after receipt of the notice.

19.4 Nothing in this Agreement will be construed to diminish any right of NOTR to contest any Taxes in appropriate judicial or administrative proceedings to the extent provided by law.

20. ALLOCATION OF INCOME AND EXPENSES.

20.1 This is an absolute net lease; except as otherwise expressly provided in this Agreement, NOTR shall have and hereby assumes all duties and obligations with relation to the repair, maintenance, existence and operation of the Line and all other improvements or fixtures now or hereafter located during the Term of this Agreement, irrespective of law or custom.

21. UTILITIES.

NOTR shall initiate, contract for and obtain in its sole name all utility services required for its use of or operations on the Line, including gas, electricity, telephone, water and sewer connections and services. NOTR shall pay all charges for such services as they become due, and shall defend, indemnify and hold NS (and the Line) harmless from costs of such services.

22. LIENS.

22.1 Except as provided below, NOTR expressly agrees that it will not allow any lien on or encumbrance against the Line, or any portion thereof, without first obtaining NS's express written consent, which may be withheld in NS's sole and absolute discretion. Notwithstanding the foregoing, NOTR may, without the consent of NS, grant to any lender or other financing party, including the Federal Railroad Administration under the Railroad Rehabilitation and Improvement Financing program or any similar governmental program (each, a "Leasehold Mortgagee"), a mortgage on or collateral assignment of NOTR's leasehold interest under this Agreement and of NOTR's personal property and improvements, provided that no such lien shall encumber NS's fee interest in the Real Property. NS shall (A) deliver to any Leasehold Mortgagee of which it has been notified a copy of any notice of default given to NOTR, (B) allow such Leasehold Mortgagee an additional thirty (30) calendar days after expiration of NOTR's cure period to cure such default

before NS exercises any right to terminate this Agreement, and (C) upon request, execute a commercially reasonable estoppel certificate and recognition agreement in favor of such Leasehold Mortgagee. A Leasehold Mortgagee or its designee may succeed to NOTR's interest under this Agreement by foreclosure or assignment in lieu thereof, subject to any required STB authority.

22.2 NOTR will pay, satisfy, and discharge all claims or liens for material and labor or either of them used, contracted for, or employed by NOTR during the Term of this Agreement in the construction, repair, maintenance, or removal of the Line and any improvements located thereon, whether said improvements are the property of NS or of NOTR. In the event the Agreement is terminated or expires, NOTR shall return the Real Property to NS free and clear of any such liens, claims and demands. Notwithstanding the foregoing, in the event that NOTR participates in any federal or state funding programs after receiving the written consent of NS for such participation, NS shall comply with all obligations to which it is subject under any such federal or state funding programs.

23. RESERVED PROPERTY RIGHTS.

23.1 NS reserves unto itself, its affiliates, subsidiaries, parents, successors and/or assigns, the following property rights hereinafter collectively referred to as the "Reserved Rights":

23.1.1 all existing agreements, leases, licenses or occupations with third parties, including any affiliates of NS, whether recorded or not, except those assigned to NOTR pursuant to Section 13.11 and Exhibit E hereof;

23.1.2 subject to the terms of this Agreement, the exclusive right to prepare and enter into future agreements, leases, licenses or occupations with third parties directly, with the exception of track lease agreements, public/private road/pedestrian crossing agreements, sidetrack and other agreements covered by Section 13.7 of this Agreement;

23.1.3 the right, by any commercially reasonable means, to install, construct, operate, maintain, repair, renew, replace, and remove utility systems and their associated and appurtenant equipment and facilities as well as the right to attach the utility systems and related facilities to existing bridges and to install them in existing tunnels; and the right of ingress and egress for access purposes;

23.1.4 the right, by any commercially reasonable means, to install, construct, operate, maintain, repair, renew, replace, and remove commercial poster panels, antennae, and towers and their associated and appurtenant equipment and facilities as well as the right to attach the commercial poster panels, antennae, and towers

and related facilities to existing bridges and to install them in existing tunnels; and the right of ingress and egress for access purposes;

23.2 NS shall retain any rentals, fees or other payments associated with the Reserved Rights.

24. EFFECT OF TERMINATION OR EXPIRATION OF AGREEMENT.

24.1 At least sixty (60) days prior to the expiration of this Agreement, or promptly upon the earlier termination of this Agreement, NOTR shall submit all necessary applications, petitions and/or notices to the STB or any successor agency to effectuate a termination of this Agreement and a discontinuance of its operations hereunder. Upon expiration of NOTR's lease of the Real Property or if NOTR's lease of the Real Property is terminated prior to expiration, NS shall have the right to enter onto and operate the Line pursuant to its residual common carrier obligation. Upon obtaining any necessary regulatory authority or exemption, NOTR will forthwith consummate discontinuance authority, vacate and surrender the Real Property, all property and assets described in Exhibit C, and any improvements made thereon to NS.

24.2 Upon expiration or earlier termination of this Agreement, NOTR shall surrender the Real Property and Rail Assets to NS free and clear of all liens and encumbrances created by NOTR, in good working order and in compliance with the maintenance standards set forth in Section 9.2 of this Agreement.

24.3 Upon expiration or earlier termination of this Agreement, NOTR shall, at no cost to NS, assign to NS all agreements entered into by NOTR pursuant to Section 13.7 hereof.

24.4 If, subject to the right of NS to seek removal of NOTR from the Line by all applicable legal means, NOTR holds over or remains in possession of the Line after the expiration of this Agreement, in addition to all other legal and equitable rights it may have, NS may elect to treat such holding over or continued possession as creating a tenancy from month to month only, and monthly rental for such period will be $1/12^{th}$ of 120% of the then current rent set forth in Section 4 herein. Such monthly rental shall be due and payable on the first of each month, in advance.

24.5 In connection with any termination of this Agreement in accordance with its terms, NOTR grants NS an irrevocable power of attorney for purposes of (i) consenting to and making any STB filing, and (ii) assigning NOTR's rights under this Agreement. This grant of NOTR's power of attorney shall survive termination or expiration of this Agreement; provided, however, that such power of attorney shall be subject and subordinate to the rights of any Leasehold Mortgagee under Section 22.1.

25. ABANDONMENT, DISCONTINUANCE OR OTHER REGULATORY ACTIVITIES.

25.1 In the event NOTR desires to discontinue rail service on or over the Line, NOTR shall first file for necessary authorization from the STB or other regulatory authority as may be appropriate, to obtain the required authority.

25.2 Prior to filing for STB authorization, NOTR shall give NS one hundred twenty (120) days prior written notice of its plan to seek such authorization. NS may, in its sole discretion, join NOTR's petition or file a separate petition for the Line.

25.3 If NOTR consummates a discontinuance of its operations on any portion of the Line, then this Agreement shall terminate as to the same, but the rental due hereunder shall continue unaffected except that no further rent shall accrue for a whole-line discontinuance.

25.4 NOTR shall be solely responsible for any protective conditions or benefits imposed by any judicial, regulatory or governmental body, for the benefit of NOTR's employees or the employees of any subsidiary or affiliate of NOTR, or are otherwise required to be paid to such employees under NOTR's collective bargaining or other agreement, howsoever arising, including as a consequence of the approval of this Agreement, the exercise or performance by NS or NOTR of any rights or obligations hereunder, the termination of this Agreement, or NOTR's discontinuance of operations on the Line. Nothing in this Section 25.4 shall limit NS's responsibility under Section 6.1 for protective conditions or benefits for the benefit of NS's employees.

26. EMINENT DOMAIN.

26.1 During the Term of this Agreement, if the whole or any part of the Real Property shall be taken, condemned, expropriated or seized by any governmental or lawful authority by the exercise of the right of eminent domain, for any public or quasi- public purpose, use or benefit, the following provisions shall be applicable:

26.1.1 If such proceedings result in the taking of the whole or a material portion of the Real Property (i.e., that which materially interferes with NOTR's use of the Line for railroad purposes), NOTR shall have the right, upon written notice to NS, to terminate this Agreement in its entirety as of the date title to the Line, or such material portion, vests in the condemning authority.

26.1.2 If such proceedings result in the taking of less than all or a nonmaterial part of the Real Property, then the Agreement shall terminate only as to the part so taken, and this Agreement shall continue in full force and effect as to that part of the Line remaining, with a reduction in rent proportionate to the land, measured by acreage, so taken.

26.2 If the temporary use (i.e., less than ninety (90) consecutive days) of the whole or any part of the Line shall be taken at any time during the Term of this

Agreement for any public or quasi-public use, purpose, or benefit, NOTR shall give prompt notice thereof to NS and the Agreement shall be suspended for the duration of such temporary taking but continue for the balance of its Term. In such case, NOTR shall continue to pay, in full, all sums and charges to be paid by NOTR under the provisions of this Agreement. In the event that such temporary taking shall exceed such ninety (90) day period, then either NS or NOTR may elect to treat such taking in accordance with the provisions of Section 26.1 hereof. The provisions of this Section 26.2 shall not apply to any temporary use or taking of the Real Property, or any portion thereof, involving or incident to any of NS's exceptions, reservations, rights or privileges contained herein.

26.3 During the Term of this Agreement, (A) if any such proceeding is instituted, or (B) if the exercise of such power is threatened, and (C) if such proceeding or threatened proceeding involves or affects any or all of NS's exceptions, reservations, rights or privileges contained in Section 23 hereof, NS shall be entitled to any and all funds payable for the taking of or damage to such exception, reservation, right or privilege; and NS shall be entitled to prosecute and receive, as the case may be, any and all claims, causes of action and awards for damages arising out of or connected therewith.

26.4 Except as otherwise expressly provided in this Section 26, NS shall be entitled to any and all funds payable for the total or partial taking or temporary use of the Real Property without any participation by NOTR, provided that nothing contained herein shall be construed to preclude NOTR from prosecuting any claim directly against the condemning authority for loss of its business, for the value of its leasehold estate hereunder.

26.5 During the Term of this Agreement, each party shall provide prompt notice to the other party of any and all proceedings for condemnation, expropriation or seizure, or any and all threats of the exercise of the powers to condemn, expropriate or seize all or any portion of the Real Property, by furnishing the other party a copy of any and all documents and written communications with respect thereto that may be received by the receiving party. NOTR shall make all reasonable efforts to cooperate with NS in the defense of such proceedings.

27. GOVERNING LAW.

This Agreement will be construed in accordance with the laws of the state of Louisiana without regard to its conflicts of laws principles.

28. INSURANCE.

28.1 Prior to the Commencement Date of this Agreement, NOTR, at its sole cost and expense, shall procure, and thereafter shall maintain in full force and effect at all times during the Term of this Agreement, insurance meeting the requirements of

this Section 30. This insurance coverage shall be effected under standard form policies issued by insurers of financial responsibility, which are rated "A" or better by either Best's Insurance Reports, Standard & Poor's Insurance Rating Service or Moody's Investors Service. NS reserves the right to reject as inadequate, coverage by an insurance company rated less than "A" by the aforementioned rating services.

28.2 NOTR shall have Railroad Comprehensive Liability Insurance with a Combined Single Limit of not less than Ten Million Dollars ($10,000,000) per occurrence, subject to a self-insured retention of One Hundred Thousand Dollars ($100,000.00) during the Term of this Agreement. Such insurance shall: (A) specifically name NS as an "additional insured" thereon; (B) include a "severability of interests" provision; (C) provide for thirty (30) calendar days' notice to NS of any change in or cancellation of the policy; (D) provide Contractual Liability insurance specifically insuring all liability assumed by NOTR under this Agreement; (E) provide Contractual Liability insurance specifically insuring all rolling stock and lading on the Line, regardless of cause, irrespective of the ownership thereof; and (F) provide Federal Employers' Liability Act coverage. This insurance shall not be deemed a limitation on NOTR's liability, but shall be deemed to be additional security therefor.

28.3 During the Term of this Lease, NOTR shall have Physical Damage Property Insurance covering all risk of loss or damage to the, Line and motive power, irrespective of the ownership thereof with a combined single limit of not less than Five Million Dollars ($5,000,000.00) per occurrence, subject to a self- insured retention of Fifty Thousand Dollars ($50,000.00). Such insurance shall name NOTR as insured, and NS as loss payee, and further shall provide amounts provided herein for the replacement value the Line and locomotives, regardless of ownership. The policy also shall waive subrogation against NS.

28.4 NOTR shall furnish certified copies of the above policies to NS's Law - Insurance Department, at the address provided in Exhibit H.

28.5 Each policy shall be endorsed to provide for thirty (30) calendar days written notice to said Law - Insurance Department at the address provided in Exhibit H prior to termination or change in the coverage provided.In the event that NOTR fails to procure or maintain the required coverage during the Term, NS may, in addition to NS's rights to declare NOTR to be in default and to terminate under Section 3.3 of this Agreement, procure at NS's discretion such insurance for NOTR's account and recover the cost from NOTR.

29. ARBITRATION.

Except as otherwise provided in this Agreement, any disputes arising under this Agreement or as a result of any of the services or covenants created by this Agreement shall be arbitrated pursuant to the Commercial Arbitration Rules of the American Arbitration Association (AAA) before a single arbitrator knowledgeable in transportation law and the railroad industry; provided however, that if the claim exceeds one million dollars ($1,000,000.00) the dispute shall be heard by a panel of three arbitrators, each of whom shall be knowledgeable in transportation law and the railroad industry. The arbitration shall be held in New Orleans,

Louisiana. Notwithstanding any then-current AAA rule to the contrary, each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs and expenses of the arbitrator(s), if any, shall be borne equally by the Parties hereto. The arbitrator(s) shall not have the power to award consequential or punitive damages. The Parties agree that the results of said arbitration shall be binding, and that any award of the arbitrator or arbitrators shall be enforceable in any court of general jurisdiction.

30. COUNTERPARTS.

This Agreement may be executed in any number of counterparts, each of which may be deemed an original for any purpose.

31. CONFIDENTIALITY.

31.1 Each party hereto covenants that all information and documents concerning the other party known to, or received or reviewed by, the first party, its employees, agents or representatives, in connection with this Agreement and the transactions contemplated hereby shall be maintained in confidence and not disclosed or utilized (other than in connection with the transactions contemplated hereby) by the first party, its employees, agents or representatives, without the other party's prior written consent, unless (A) such information and documents were, are now, or become generally available to the public (but not as a result of a breach of any duty of confidentiality by which the first party, or any of its employees, agents and representatives, is bound), (B) such information and documents were known to first party prior to their disclosure to the first party by the other party in connection with this Agreement, as demonstrated by the first party's written records, (C) such information and documents are disclosed by a third party, or (D) such items are required to be disclosed pursuant to a judicial order or applicable law, rule or

regulation or to the parties' insurers. Notwithstanding anything herein to the contrary, each party may disclose (without prior notification to, or approval or consent by, the other party), to taxing authorities and/or to such party's representatives, outside counsel and advisors, any confidential information that is required to be disclosed in connection with such party's tax filings, reports, claims, audits, and litigation.

31.2 In the event that either party hereto, or any of its employees, agents or representatives, becomes legally compelled to disclose any such information or documents, the disclosing party shall provide the other party with prompt notice before such disclosure so that the other party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement, or both. In the event that such protective order or other remedy is not obtained, or that the other party waives compliance with the provisions of this Agreement, the disclosing party shall furnish only that portion of the information or documents that it is advised by written opinion of counsel is legally required.

31.3 It is agreed that money damages would not be a sufficient remedy for any breach of this Section 31 and that either party hereto shall be entitled to specific performance as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Section 31 but shall be in addition to all other remedies available at law or in equity. Each party hereto further agrees and covenants that it shall not use any information or document that it obtains or has obtained in connection with this Agreement in any judicial or administrative proceeding brought against the other party, except in a proceeding for breach of this Agreement. With respect to any judicial or administrative proceeding brought by a third party challenging any provision of this Agreement or relating to any action or inaction required by this Agreement, the party against whom such proceeding is brought may use for purposes of defending such proceeding information or documents that it obtains or has obtained in connection with this Agreement; provided, however, that the party against whom such proceeding is brought shall consult with and obtain the written consent of the other party prior to such use of information or documents.

32. FORCE MAJEURE.

32.1 The prompt and timely performance of all obligations and covenants under this Agreement, including the obligation to make prompt and timely payment of each installment of Rent or any other payment of any nature, is and shall be of the essence of this Agreement.

32.2 Whenever a period of time is provided in this Agreement for either party to do or perform any act or thing, other than payment of Rent, said party shall not be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, war, terrorist acts, court orders, work stoppages, nuclear incidents, riots, public disorder, criminal acts or acts or omissions of other parties or entities, governmental

regulations, or other such causes beyond the reasonable control of said party (each a "Force Majeure"). In the event of such Force Majeure, the performance time period shall be extended for the amount of time said party is so delayed; provided, however, that this Section 32.2 shall not be construed to affect the responsibilities of said party hereunder to perform such act or thing once such Force Majeure conditions have been removed. Parties should provide each other with notice of any event of Force Majeure and shall take reasonable steps to resolve each event. Once Force Majeure event is resolved, the Party shall notify the other and shall reinstate operations pursuant to the Agreement.

33. LIABILITY.

33.1 Except as otherwise provided herein, NS shall not be liable for or on account of any loss, damage, or claim to or concerning the Line, the Real Property or, any and all improvements or fixtures located thereon, the property of NOTR or any third party, or for personal injury or death of any employee, agent or individual that may result from NOTR's operation, use or interest in the Line or the Real Property. NOTR shall defend, indemnify, reimburse, and hold harmless NS, its affiliates, and their respective directors, employees and agents from and against any and all liability, obligation, loss, judgment, claims, costs (including but not limited to court costs and attorney's fees), damages and expenses whatsoever arising in any manner out of NOTR's (A) failure to comply with all applicable laws, ordinances, regulations, protective conditions, benefits or agreements; (B) use of the Line and any other improvements or fixtures hereafter placed on the Real Property by NOTR during the Term of this Agreement; (C) liability for any and all claims, liens, or demands identified in Section 22.2; and/or (D) responsibility for any and all protective conditions or benefits imposed by any judicial, regulatory or governmental body as identified in Section 25.4.

33.2 Except as otherwise provided herein, NOTR does not assume and shall not be liable for or on account of any loss of, damage to, or claim concerning the Line, or any and all improvements or fixtures located thereon, the property of NS or any third party, or for injury or death of any employee, agent or individual caused by or arising from (A) NS's (or NS's permittees, contractors, agents, invitees or others acting by, for or under the authority of NS) operation, use, ownership or presence on or about the Line prior to commencement of this Agreement or subsequent to termination or expiration of this Agreement, or (B) NS's (or NS's permittees, contractors, agents, invitees or others acting by, for or under the authority of NS) operation, use, ownership or presence on or about the Line pursuant to any exercise or purported exercise of its Reserved Rights.

33.3 The provisions of this Section shall survive and continue in full force and effect notwithstanding any expiry or termination of this Agreement.

34. SEVERABILITY.

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such

determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

35. TIME IS OF THE ESSENCE.

Time is of the essence with respect to each provision of this Agreement.

36. AMENDMENT.

No provision of this Agreement shall be modified without the written concurrence of the Parties hereto in a written instrument signed by an authorized officer of each Party and denominated as an "amendment" to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate, each part being an original, as of the Execution Date.

NORFOLK SOUTHERN RAILWAY COMPANY

WITNESS:

_____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

NEW ORLEANS TERMINAL RAILROAD, LLC

WITNESS:

_____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT 15

(OPERATING PLAN)

PUBLIC VERSION



Concept logo design

NEW ORLEANS TERMINAL RAILROAD, LLC

A subsidiary of CLR

Operating Plan

(Exhibit 15)

STB Finance Docket No. 36873

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1. Introduction

1.1 Purpose

The New Orleans Terminal Railroad, LLC (NOTR) was created to establish a railroad committed to maximizing network fluidity and enhancing competition through the New Orleans Gateway. This Operating Plan describes how NOTR will operate and maintain the Back Belt, and dispatch and occasionally operate the New Orleans Terminal from West Bridge Junction to Seabrook ("Operating Territory"), as further defined in Section 2. NOTR is a wholly owned subsidiary of County Line Rail Fund II, LP (CLR) and will be operated as a privately held Class III railroad.

Where a commitment in this Operating Plan depends on another railroad's agreement or a regulatory approval, it is written as a condition.

1.2 Assumptions

1. The UP/NS merger is approved and consummated. "UP" in this Operating Plan means the merged UP/NS system unless noted otherwise.
2. UP states it will eliminate interchange movements between legacy UP and legacy NS on the Back Belt and interchange movements between BNSF and legacy NS at Oliver Yard and performs legacy NS interchange at the legacy UP's Avondale Yard. UP will continue to use Oliver Yard for local operations (Chalmette Branch traffic etc.) and interchanges with CN, CPKC and NOPB. as indicated in the UP Revised Operating Plan.[1]
3. BNSF continues to dispatch and maintain the BNSF-UP joint line from Iowa Jct. to the BNSF Avondale Yard.
4. UP continues to own and dispatch the Avondale Subdivision between the BNSF Connection (MP 14.9) and West Bridge Jct (MP 10.5).
5. Existing control points, mileposts and station names stay the same, so crews and dispatchers see the names and mile posts they use today.
6. Existing agreements between rail carriers are assigned, modified, or renegotiated to facilitate NOTR's purpose and operations.

1.3 Operating Alternatives

The services in Section 5 depend on where UP interchanges traffic and on which agreements are in effect at start-up. UP has stated it will move legacy UP, legacy NS and BNSF interchanges to Avondale Yard and maintain interchanges for CN, CPKC and NOPB at Oliver Yard. NOTR will operate under whichever of the following scenarios applies:

1. **Alternative 1: UP Follows Stated Plan:** If Oliver Yard stays open for interchanging CN, CPKC and NOPB traffic, NOTR will dispatch trains operating to/from Oliver yard across all segments of the Operating Territory, while also dispatching UP and BNSF trains interchanging at Avondale between West Bridge Jct and Seabrook.
2. **Alternative 2: UP Moves All Interchanges to Avondale:** If UP relocates all connecting carrier interchanges from the Back Belt and legacy NS's Oliver Yard to legacy UP's Avondale Yard, NOTR will dispatch the train movements between West Bridge Jct and Seabrook.

1.4 Compliance with 49 CFR 1180.8(c) (Exhibit 15)

This Operating Plan is submitted as NOTR's Exhibit 15 under 49 CFR 1180.8(c). Consistent with 1180.8(c), the Plan discusses any significant changes in service patterns and types of service that will

[1] See, Application Vol. 1 at 750-751.

result from NOTR's assumption of dispatching and operating responsibility for the New Orleans terminal corridor.

1. Traffic Level Density (1180.8(c)(1)) – The traffic level from all carriers currently operating over the Back Belt and adjacent lines will not be impacted by the NOTR transaction.
2. Impacts on Commuter or Other Passenger Service (1180.8(c)(2))– Amtrak service over the Back Belt and adjacent lines will not be impacted by NOTR's dispatching operations.
3. Operating Economies (1180.8(c)(3)) – NOTR does not expect any significant operating economies from its dispatching of the Back Belt and adjacent lines.
4. Anticipated Discontinuances or Abandonments (1180.8(c)(4)) – NOTR does not anticipate any discontinuances or abandonments.

2. Territory

NOTR will own or lease, maintain and dispatch the Back Belt between the CN/IC Connection at 0.0 A and Oliver Jct at MP NO 194.1/7.9 NT subject to final transaction documents with UP. NOTR will dispatch, from: 1) West Bridge Jct over the NOPB's Huey P. Long Bridge to East Bridge Jct (Huey P Long Bridge), 2) West Bridge Junction to the CN/IC Connection (CN Segment); 3). CN/IC Connection to Oliver Junction (Back Belt); and 5) Oliver Junction to Seabrook (NO&NE Segment). NOTR will dispatch these segments under executed joint facility, dispatching and operating agreements with each carrier or Board order as applicable

3. Dispatching and Management Organization and Staffing

3.1 Primary Dispatch Center and NOTR Offices

NOTR will place its dispatching center in New Orleans. NOTR will keep a backup dispatching console able to take over the full NOTR territory if the primary console is unavailable. The first backup console will be in CLR's Houston office, and the second backup console will be in CLR's Los Angeles office. Both are in the United States (49 CFR Part 241). No matter which site is used, NOTR dispatchers will control the NOTR system, under the same rules, priority order and information firewall as the primary center. No other railroads' personnel or systems will dispatch NOTR territory.

Backup NOTR dispatching will take the following factors into consideration.

1. **Transportation.** NOTR will fly dispatchers and support personnel to either backup site. If commercial flights are not available, NOTR will use a jet broker such as Air Partner to quickly transport dispatchers and support personnel such as Chief Dispatchers.
2. **Hurricanes.** Storms give several days' warning, so NOTR will move staff to the backup site ahead of the storm, normally no later than 72 hours before tropical-storm-force winds are forecast to reach New Orleans. If the same storm also threatens Houston, NOTR goes directly to Los Angeles.
3. **Testing.** Switchover to each backup site will be tested and documented every year before hurricane season (June 1), along with the other annual drills.
4. **Readiness.** Workstations and NOTR system access are kept in place at the backup sites, so switchover does not depend on shipping equipment. When a backup site is activated, CLR personnel at the backup location(s) will start the computer equipment and prepare the dispatching console for dispatcher login. NOTR's target is to restore dispatching within two hours after staff arrive at the activated backup site.

3.2 Sudden Outage and Manual Operation

If the primary dispatch center loses its system, power or communications without warning, all train traffic in the Operating Territory will be stopped immediately and will resume only when a qualified dispatcher provides authority for train movements. Because the Operating Territory is operated under a Centralized Traffic Control (“CTC”) system, during an extended system or power outage the dispatcher will authorize movements by track and time (General Code of Operating Rules (“GCOR”) 10.3), issued verbally and recorded by hand, or by other manual procedures approved by the Chief Dispatcher, until normal dispatching is restored at the primary or backup center (TDCOM 60.8). If PTC is also affected, the rules in Section 8.1 apply.

Backup communications for manual operation (satellite phone, cellular phones and a portable radio on the NOTR road channel) and an outage kit (paper track and time forms, train movement record sheets and the territory chart) will always be kept at the dispatcher's console.

3.3 Staffing

NOTR will staff the dispatch office for continuous qualified coverage, required rest and surge capability. At a minimum, one qualified train dispatcher and one qualified Chief Dispatcher will always be on duty. Train dispatchers will work 8-hour shifts (9 hours maximum) and Chief Dispatchers will work 12-hour shifts for business continuity. NOTR will maintain a qualified relief pool of train dispatchers large enough to cover vacation, illness, training, emergency absences and activation of a backup dispatch center without exceeding hours-of-service limits. Before recruiting externally, NOTR will give strong consideration to qualified, affected regional railroad employees in good standing.

The Super Chief (the senior Chief Dispatcher) will lead the dispatch office, supervise the Chief Dispatchers, receive carrier service and neutrality complaints (Section 4), and is the escalation point for carrier service issues. The Super Chief and all Chief Dispatchers will be trained and fully qualified train dispatchers.

3.4 Dispatch Technology and Carrier Visibility

NOTR will provide draft dispatching protocols adapted from the BNSF Railway TDCOM effective October 1, 2024.

To increase fluidity through the terminal, NOTR will ask the connecting carriers for live visibility of their subdivisions that feed NOTR.

The Chief Dispatcher will hold a planning call twice daily with all connecting carriers and every carrier with movements over NOTR should take part. The twice daily calls will set the subsequent 12 hours of windows and slots. NOTR will also utilize a messaging system with the connecting railroads' yard, dispatching and operations personnel to pass real-time information such as delays and special requests. NOTR will require connecting carriers to update NOTR in real time as train activity changes so NOTR can re-slot traffic and keep the terminal fluid. Trains of a carrier that routinely fails to update train status, and causes frequent delays as a result, may lose their scheduled windows and move to a first come, first served basis (Section 4). Data exchange will be covered by written data-sharing and cybersecurity terms in the master joint facility agreement.

4. Neutral Access

1. No freight carrier will receive preferential access in the Operating Territory because of ownership, affiliate status, volume, or commercial relationship with NOTR, CLR, or for any other reason.
2. NOTR will dispatch trains over the Operating Territory using the following priority order: emergencies, Amtrak (49 U.S.C. 24308(c)), trains in their scheduled window, then first come, first served (TDCOM 54.2). Windows for all traffic will be reviewed monthly and adjusted for changes in connecting carrier operations, train counts and other relevant factors.

3. One published tariff covering every situated carrier operating over the Back Belt, and one set of operating rules, apply to every carrier.
4. An information firewall will keep each carrier's commercial information from the others.
5. NOTR will establish a procedure to address any complaints regarding its neutral dispatching of the Back Belt.

5. NOTR Plan of Operation

1. NOTR will dispatch all train traffic from West Bridge Jct to CP Seabrook, segment by segment as the agreements in Section 2 take effect.
2. NOTR will grant operating rights for overhead movements over the Back Belt to all Class I railroads with existing operating rights and to new users including CN, NOPB and CPKC. NOPB will be granted operating rights for overhead movements, which are also the same additional rights it requested in its own application to the STB. Additional operating rights will be granted during a phased approach once NOTR has assumed dispatching operations and a service design plan has been developed and studied to understand true capacity within the Operating Territory.
3. NOTR will maintain the Back Belt track, bridges, signal system, and PTC system with NOTR employees and/or contractors (Section 7).
4. NOTR will seek to have one master agreement that each Class I railroad can become party to that will set the terms and conditions for “emergency crew relief.” This will include conditions and rates for such services. Based on response by the Class I carriers, NOTR expects to have its emergency crew base established 6-12 months after the NOTR assumes dispatching operations. No carrier is required to utilize NOTR crews. However, if a railroad operates a train across the Operating Territory and the crew does not have sufficient time remaining to work under the Hours of Service rules, NOTR has the right not to accept the train or have the interchanging carrier park the train at locations identified by NOTR.
5. NOTR will work closely with state and local government authorities on grade-crossing delays, public safety, emergency response, permitting, infrastructure planning and other community impacts, while continuously delivering safe and fluid train operations.

6. Weather and the Huey P. Long Bridge

NOTR operates in a region that sees frequent severe weather and will take a proactive approach, using a paid weather service for detailed severe-weather monitoring, including high-wind warnings. On the Huey P. Long Bridge, NOTR will adopt the current NOPB wind restrictions (NOPB Timetable No. 7; NOTR Timetable No. 1, Item 9D). NOPB, as owner, has sole authority over wind restrictions on the bridge. NOTR will coordinate any change to high-wind operating plans with NOPB and every railroad that uses the bridge for regular movements. The hurricane plan, including activation of the backup dispatch center, is further explained in Section 13.

7. Track, Bridge and Signal Maintenance

NOTR will maintain the Back Belt under written track, bridge, signal, roadway worker protection and inspection programs that meet or exceed federal requirements (49 CFR Parts 213, 214, 234, 236 and 237). Before start-up, NOTR will complete and document a baseline condition assessment of the Back Belt track, bridges, signals, switches, drainage, grade crossings and communications systems. This assessment will occur as part of the due diligence process for the negotiated sales price or lease terms of the Back Belt.

1. NOTR will have a Roadmaster or third-party contractor responsible for track and signal maintenance. The Roadmaster will have a hi-rail vehicle for track inspection. NOTR will also work with the connecting railroads to use their advanced track inspection equipment where available.
2. NOTR will maintain the Back Belt to at least Class 3, its current Federal Railroad Administration ("FRA") track class (Class 3 under 49 CFR 213.9, which supports today's timetable speeds of 30 MPH freight and 40 MPH passenger).
3. NOTR's maintenance program will set inspection frequency, defect escalation, slow-order authority, repair priority, material availability and target restoration times. NOTR will prioritize repairs by safety risk, operating impact, material availability and regulatory requirements.
4. NOTR will keep an on-call response roster, identified repair contractors, a stockpile of critical materials and a 24-hour incident notification process. NOTR will work in good faith with connecting carriers to provide rail materials at cost for repairs that keep trains moving through the New Orleans terminal.
5. A contractor that specializes in railroad bridges will inspect all bridges on the NOTR-owned or leased portion of the Back Belt (49 CFR Part 237), and a certified bridge repair company will perform maintenance and repairs as needed. The signal system, including all power switches NOTR owns, will be handled the same way (49 CFR Parts 234 and 236).

8. Rules, Training and Certification

NOTR will use the latest edition of the GCOR (currently the Ninth Edition, effective September 23, 2025). NOTR will also develop special instructions, a timetable (NOTR Timetable No. 1), a train dispatcher's manual (TDCOM), and locomotive engineer and conductor training manuals. DOT hazmat training manuals, and all other rule books and materials required by federal regulations for railroad operations.

NOTR will run a rigorous program for management personnel covering Designated Supervisor of Locomotive Engineers ("DSLE") certification and training and continuing education for all managers, including the Super Chief and Chief Dispatchers. NOTR will deliver both in-house training and training by outside providers.

8.1 PTC Readiness

NOTR will not take dispatching control of PTC-required territory until an FRA-compliant PTC arrangement is in effect for that territory.

The PTC implementation agreement will name the party responsible for each segment: the Huey P. Long Bridge, the CN segment, the Back Belt and the NO&NE Segment. NOTR will work with UP to develop the PTC interface at East Bridge Jct and CP Seabrook. If PTC is unavailable or degraded, NOTR will apply the controlling railroad's FRA-compliant operating rules and restrict movements as the applicable PTC safety plan requires.

9. Hazardous Materials and Security

1. NOTR will address key train handling, key train securement and High Threat Urban Area limits in its Timetable.
2. NOTR will complete RSSM chain of custody at every handoff where an NOTR crew takes or delivers a train (49 CFR 1580.107).
3. CLR will designate a rail security coordinator for NOTR upon completion of the transaction.

10. Amtrak Hosting and Preference

1. Amtrak trains have preference under 49 U.S.C. 24308(c).
2. NOTR will negotiate a hosting agreement with Amtrak for NOTR-dispatched territory, and coordinate with Amtrak's passenger train emergency preparedness plan (49 CFR Part 239).
3. NOTR is willing to not change the current payment structure for Amtrak to help facilitate the continued growth of passenger traffic to and from New Orleans.

11. Grade Crossings

1. NOTR will update the federal crossing inventory for Back Belt crossings and install emergency notification signs showing NOTR's number.
2. NOTR will maintain the existing Metairie Quiet Zone (MP 0.7 A to 2.6 A).
3. NOTR will plan and dispatch train movements to avoid unnecessary obstruction of public grade crossings and, consistent with Jefferson Parish's 150-foot rule, will not stop or store rail equipment within 150 feet of a public crossing except when required by operating conditions or an emergency. NOTR will coordinate promptly with Jefferson Parish and affected emergency-response agencies when a crossing is blocked or recurring delays develop (Timetable Item 9G).

12. Performance Reporting

NOTR will report monthly to every tenant carrier: trains handled, average delay by carrier and by cause, holds logged for another carrier's train, slow orders in effect, and handoff performance (time from arrival at the handoff point to NOTR departure). NOTR will also file the monthly report with the STB.

1. **Maintenance of Records**. NOTR will maintain all dispatch records, delay codes, planning-call records and train-movement data required to evaluate its operation of the Operating Territory.
2. **Common definitions and audit.** NOTR will publish common definitions for scheduled window, delay minutes, hold time, carrier-caused delay, infrastructure-caused delay, weather delay and force majeure. Each connecting carrier will receive the same monthly performance data and may audit the records for its own movements, subject to the information firewall

13. Emergency and Hurricane Plan

Authority. The Chief Dispatcher has authority to stop, restrict or reroute movements when conditions create a safety risk. The Superintendent, or a designated incident commander, has authority to activate emergency operating procedures and the backup dispatch center (Section 3.1).

Hurricane trigger levels. NOTR will keep written hurricane trigger levels (TDCOM 60.7) covering: monitoring; pre-storm planning; backup-center activation; stopping bridge movements (Timetable Item 9D); train securement; protection of hazardous-material trains; employee evacuation; communications checks; fuel, generator and UPS readiness; flood gate coordination (Timetable Item 9H); post-storm inspection; and phased restoration of service.

Sudden outage. Manual operation by track and time follows Section 3.2 and TDCOM 60.8.

14. Implementation Timeline

NOTR will move from STB decision to start-up in six phases, which will be coordinated with UP’s planned integration plan. Phases overlap where they can.

1. **Pre-closing readiness.** Execute the property transfer, joint facility, dispatching, trackage rights (including the UP Avondale Subdivision), PTC, Amtrak hosting, data-sharing, maintenance and

emergency response agreements. Complete the baseline asset assessment (Section 7) and baseline capacity review.

2. **Program approval and build-out.** Finalize FRA-required programs; set up drug and alcohol coverage; obtain radio authorization; build and test the primary and backup dispatch centers; buy and install the dispatch, recording, communications and PTC access systems.
3. **Hiring and qualification.** Hire dispatch, field management, maintenance and crew personnel. Complete rules, physical characteristics, locomotive, PTC, hazmat and emergency response qualification (Appendix A). Set up the crew extra board.
4. **Testing and transition.** Run tabletop exercises, joint dispatch simulations, PTC and communications testing, manual-operation drills, and parallel or shadow dispatching as agreed with the current dispatchers (NS, UP, CN).
5. **Cutover.** NOTR assumes operations only after written confirmation that the required agreements, trained personnel, PTC arrangements, maintenance readiness, emergency contacts, published tariff and regulator-required programs are in place. No dispatch cutover occurs until PTC readiness is verified for every PTC-required segment (Section 8.1). Cutover can happen segment by segment.
6. **Stabilization.** Weekly operating reviews with the carriers for the first 90 days, then monthly performance reviews. Windows and staffing are adjusted based on measured delay, dwell and recovery performance.

PUBLIC VERSION

BEFORE THE

SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36873

UNION PACIFIC CORPORATION AND UNION PACIFIC RAILROAD COMPANY

-CONTROL-

NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED STATEMENT OF BRYAN BOAZ

My name is Bryan Boaz. I am President of New Orleans Terminal Railroad, LLC ("NOTR") and Chief Commercial Officer of County Line Railroad Interests, LLC, a holding company based in Houston, Texas that does business as "CLR." NOTR is an indirect, wholly owned subsidiary of CLR. My business address is 535 W. 20th Street, Suite 250, Houston, Texas 77008.

I am submitting this Verified Statement in support of NOTR's Responsive Application in this proceeding. I sponsor NOTR's Operating Plan (Exhibit 15 under 49 C.F.R. 1180.8(c)). I also provide the information the Board's rules call for on the purpose of the transaction and the effect on employees (49 C.F.R. 1180.6(a)(1)(iii) and (a)(2)(v)). Unless otherwise indicated, this testimony comes from my own knowledge and work, the carriers' published timetables, and my review of the public version of the Applicants' Amended Railroad Control Application ("Revised Application").

I. My Background

I have worked in freight rail for about 23 years, most of that time on the Gulf Coast. I began in transportation operations at The Kansas City Southern Railway Company ("KCS") as a conductor trainee in September 2003. I then rose through the railroad's operating ranks, serving as an Assistant Trainmaster, Terminal Trainmaster and Road Trainmaster across the KCS Transcon network. Later, I became KCS's first Director of International Business Development. In that position, I reported directly to members of the KCS C-suite, took part in capital planning and strategic projects, and led or took part in many of the company's largest initiatives in the United States and Mexico. Those initiatives included redeveloping the railroad's operating strategy and commercial agreements in the New Orleans gateway after Hurricane Katrina destroyed the KCS New Orleans yard. A project that I developed from scratch at the request of the COO of KCS was the relocation of the KCS Train Dispatching Center (Network Operating Center- NOC) which included the railroad's locomotive utilization and planning team, and the critical incident desk. I planned out all the details of the project including designing the new dispatching center in Kansas City, hiring replacement dispatchers for vacancies created by KCS dispatchers that did not want to relocate from the Shreveport, LA dispatching center, creating the transition timeline, etc. This event is one that holds key value to the proposal that I am advocating for with the NOTR.

In 2011, I joined Railserve as Director of Business Development. For about 1.5 years I developed in-plant switching, locomotive leasing and transloading business, including new business with Enbridge Energy in Pampa, Texas. In November 2012, Enbridge Energy hired me to manage rail logistics for two of its trading organizations and later placed me in a commercial role managing its crude-by-rail program. In January 2019, I joined ExxonMobil as a Rail Planning & Operations Field Supervisor and was soon asked to lead ExxonMobil's Gulf Coast Rail

Operations. ExxonMobil's North American rail network ships well over 350,000 loaded railcars per year with a fleet of about 38,000 railcars, and most of those shipments originate on the Gulf Coast.

A large percentage of these shipments moved through the New Orleans gateway, which for most of my time at ExxonMobil was served by seven Class I carriers (before Canadian Pacific and Kansas City Southern combined in 2023). During my time at ExxonMobil, I worked extensively with the New Orleans Public Belt Railroad ("NOPB") as a customer of its rail interchange services. I also stored thousands of loaded and empty railcars on NOPB.

My role at ExxonMobil required detailed, hands-on knowledge of every carrier's operations in the New Orleans terminal and of Gulf Coast rail infrastructure. I used that knowledge to work with the Class I railroads and NOPB to move tens of thousands of ExxonMobil railcars through the terminal as quickly as possible. I made routing and rerouting decisions, including when to use the Back Belt instead of NOPB, and managed movements during hurricanes, ice storms, derailments, and other outages. To my knowledge, no other large shipper managed its movements through the New Orleans gateway as actively as ExxonMobil did. I am bringing that experience to my role as President of NOTR. NOTR was not drawn up from a map. It is built on the same routing, interchange and outage decisions I made in this terminal for years as the customer paying the freight bill.

In May 2025, I left ExxonMobil to rejoin the rail industry through an opportunity provided by CLR. Since July 1, 2025, I have been Chief Commercial Officer at CLR. My work has focused on terminal operations and development, short line railroad strategy and pricing, industrial rail yards and transloading facilities development, and developing solutions for shippers across the United States with new rail yard solutions and routing options that increase fluidity of the overall

rail network increasing capacity and providing a path for increased carrier reliability which is of key importance to Shippers.

I was appointed to the STB's Rail Energy Transportation Advisory Committee ("RETAC") in 2023 by Chairman Martin Oberman and reappointed in the summer of 2026 by Chairman Patrick Fuchs. I am currently serving my second term. I was a member of the American Petroleum Institute's Rail Subcommittee from 2014 to 2025 and its chair for at least half of that time. In that role, I led industry initiatives for rail service improvements and worked with the Board and members of Congress from both parties. My full resume is attached as Exhibit A to this Verified Statement.

II. CLR and NOTR

A. CLR

CLR is a privately held owner-operator of rail terminals and infrastructure developer headquartered in Houston, Texas.[1] CLR's team of rail professionals manages each aspect of company functions, including rail operations, development, construction, engineering, asset management, and business development. CLR offers customers a full suite of rail services, including railcar handling, switching, transloading, dispatching, cleaning, maintenance and more. CLR's current portfolio includes three rail terminals and one Class III carrier - the Sabine River & Northern Railroad (SRN) - each in the Texas Gulf Coast. CLR maintains working relationships with all six Class I railroads, short line holding companies, and Amtrak.

[1] CLR has several affiliates that operate under the CLR umbrella, including County Line Rail Fund I and County Line Rail Fund II, LP. For purposes of this VS, any reference to "CLR" is understood to include County Line Rail Fund I County Line Rail Fund II, LP and any other affiliated companies, unless explicitly noted.

CLR has no Class I owner, and no Class I railroad holds any equity or governance right in CLR or NOTR. CLR currently has no line-haul business on its common carrier railroad the SRN and takes no line-haul rate or division at New Orleans.

B. NOTR

NOTR is a Louisiana limited liability company that was formed in September 2026 as a wholly owned subsidiary of CLR.[2] It is not yet a rail carrier. If the Board grants the Responsive Application, NOTR will become a Class III common carrier railroad.

Under the Operating Plan, NOTR will purchase, own, maintain and dispatch the Back Belt, and dispatch the connecting segments that make up the New Orleans Terminal Area as defined in the Responsive Application (Operating Plan Section 2).[3] The Back Belt and surrounding segments are one of the few locations in the U.S. in which all six Class I railroads, Amtrak and short line railroads operate trains in the same terminal area.[4]

NOTR's only business will be operating that terminal corridor. It will not solicit freight, quote line-haul rates, or take a position in any carrier's routing. It will provide neutral gateway

[2] Specifically, NOTR is a subsidiary of County Line Rail Fund II, LP.

[3] If for some reason the STB decides against divesting the Back Belt as part of the merger, NOTR is open to a long-term lease of the line from NS, including assuming all maintenance operations on the line.

[4] The STB has created an interactive map based on information filed by UP and NS that shows the Back Belt and its relationship with other the other railroads operating in the New Orleans Terminal Area. See, https://experience.arcgis.com/experience/d03f432c2dfd466894184a77d2cc2547/page/Main-Page. The map also includes the train counts over the Back Belt as submitted by the UP and NS. Based on my knowledge and experience, I believe the train counts developed by the Applicants and shown on the STB map are understated. My experience and research indicates UP operates eight trains per day over the Back Belt, including two eastbound trains to NS and CSX, respectively, and two westbound trains from NS and CSX, respectively. Additionally, BNSF operates four trains per day over the Beck Belt, including one train each to NS and CSX going east and one train each from CSX and NS going west. In addition, the CPKC operate four trains per day over the western end of the Back Belt from the CN/IC connection to Shrewsbury while CN receives four local trains per day at its Mays Yard, two from NS and two from CSX. While all of this freight traffic is moving over the Back Belt, Amtrak is moving its own trains through the terminal area, including six Sunset Limited trains per week, two Amtrak Crescent trains and four Mardi Gras trains.

dispatching to optimize train movements for all carriers and work to enhance competition for all Class I carriers and NOPB in New Orleans. As discussed in the Operating Plan, NOTR's plan for dispatching the Back Belt gives preference to emergency trains first, then Amtrak trains as required by statute and then will provide dispatching to all freight traffic on a neutral basis.

The Board's acceptance of NOTR's responsive application and establishment of NOTR as the neutral terminal railroad in the New Orleans Terminal Area has garnered significant support from local officials. Attached to my statement are several letters expressing support for the project.

C. NOTR's Organization and Staffing

NOTR will hire its own people for dispatching and will not contract with a carrier-affiliated dispatcher. NOTR will identify candidates before the Board rules and begin hiring them upon the effective date of the merger and having a clear path forward on the purchase of the Back Belt. NOTR's initial organization will be (Operating Plan Section 3.3):

President (1). The President of NOTR will be responsible for all of the positions listed below. This role will be the primary interface with the parent company CLR and will provide oversight and guidance to NOTR.

1. **Superintendent (1).** Responsible for NOTR operations, field management and safety, and the escalation point above the Super Chief. This position will be the contact for all rail carriers operations personnel equivalents in the region. The Superintendent will also be the primary NOTR Employee to engage with local and state government officials, coordinate first responder training activities and conduct monthly Gateway meetings with all railroads serving New Orleans.
2. **Super Chief (1).** The Super Chief is the senior Chief Dispatcher, who leads the dispatching office in New Orleans and is the escalation point for carrier service issues for short-term service issues. The Super Chief will report to the Superintendent.
3. **Chief Dispatchers (4).** One on duty at all times on rotating 12-hour shifts. The Chief Dispatcher runs the twice-daily planning calls and sets windows and slots. The Chief also assists the Train Dispatcher in managing the New Orleans Terminal and will be qualified as a train dispatcher. The Chief Dispatcher will also facilitate the management of dispatcher schedules ensuring all positions are filled.
4. **Train Dispatchers (12).** One on duty at all times on 8-hour shifts 365 days per year. The rest of the group covers vacations, illnesses, training, a second dispatcher during peak periods and

hurricanes, and activation of a backup dispatch center, without exceeding hours-of-service limits (9 hours per shift for dispatchers).

5. **Field Trainmasters (3).** Field coordination with the connecting carriers, incident response, operations testing, and supervision of NOTR emergency relief crews. Field Trainmasters will cross train and be capable of working the Chief Dispatcher role if needed. At least one Field Trainmaster will be DSLE certified- capable of training and certifying locomotive engineers.
6. **Safety Manager (1).** Responsible for all dispatcher and trainmen, FRA reporting, roadway worker protection program, and oversees the operations testing program. Leads the safety culture program for NOTR and works to collaboratively develop best practices with the class I carriers and NOPB
7. **Roadmaster (1).** Track and signal inspection maintenance of the Back Belt, supported by specialist contractors (Operating Plan Section 7).

The Super Chief, the Chief Dispatchers and the train dispatchers will all be qualified train dispatchers for the New Orleans Terminal territory, recruited from experienced Gulf Coast dispatchers to the maximum extent possible. NOTR will also establish a base for emergency crew relief in months 6 to 12 of the transition of assuming dispatching, under a master agreement that any Class I carrier may join (Operating Plan Section 5).

NOTR will not own locomotives or freight cars. When its crews move a train under the emergency crew relief agreement, they will use the carrier's locomotives under that agreement. All trains moved across the NOTR dispatched territory will remain in the inventory of the railroad delivering the train to the appropriate connecting carrier. NOTR's equipment will include dispatch systems (Wabtec TMDS with Movement Planner as decision support), positive train control ("PTC") equipment, recorded radio and telephone systems, and hi-rail vehicles for inspection. Backup dispatch consoles will be located at CLR's Houston office and, as a second backup, in CLR’s Los Angeles office (Operating Plan Sections 3.1 and 3.4). NOTR will keep an inventory on the railroad’s property of track and signal materials for planned maintenance and for emergency response to unplanned track defects.

D. Building the Dispatching Team

CLR does not dispatch trains today beyond the trains operating on the SRN. NOTR will build that capability by hiring people who know train dispatching, network operations and rail safety, and by giving them the systems and support described in the Operating Plan. The company will be new to dispatching; the people doing the work will not be. Its performance will depend on the team, the operating rules, and how the technology is used. The team members of NOTR will be veteran railroaders and have a deep "bench strength" of experience not only in train dispatching but also experience in dispatching terminal territories with a focus on New Orleans. This model has proven itself to be successful in recent years with the creation of the Alameda Belt Line. Other examples can be pointed to in other states where successful dispatching operations can be started and enhance operations for all carriers that utilize the line.

NOTR's dispatchers will work under the General Code of Operating Rules, NOTR Timetable No. 1, and the NOTR Train Dispatcher's and Control Operator's Manual ("TDCOM"), which is adapted from BNSF's manual and adds NOTR's neutral dispatching rules (Operating Plan Section 8). Wabtec's TMDS brings centralized traffic control ("CTC"), PTC, and other dispatching functions into one system, and Movement Planner provides train visibility, planning and optimization.[5] NOTR will use these tools for decision support, not automated dispatching. A qualified dispatcher will make the decisions. Before taking control of any segment, NOTR must demonstrate that its personnel, territory qualifications, system configuration, interfaces and backup arrangements meet applicable requirements. Buying the software does not complete that work.

[5] Wabtec Corporation, TMDS Train Management Dispatch System, https://www.wabteccorp.com/digital-intelligence/signaling-and-train-control/dispatch/tmds-train-management-dispatch-system; Wabtec Corporation, Movement Planner, https://www.wabteccorp.com/digital-intelligence/scheduling-planning-and-optimization/movement-planner.

NOTR's dispatchers will continue to use existing control points, mileposts and station names, to simplify the transition. The proposed ownership and dispatching segments are summarized in Table 1 below.

Table 1

Proposed Ownership and Dispatching Responsibilities

Segment	Limits	Owner	Dispatcher today	NOTR role
A. Huey P. Long Bridge	West Bridge Jct to East Bridge Jct	NOPB (unchanged)	UP	Dispatch only
B. CN segment	East Bridge Jct to CN/IC Connection, performing the same functions UP does today across the two CN interlockers	CN (unchanged)	UP	Dispatch only
C. Back Belt	CN/IC Connection (MP 0.0 A) to East City Jct (MP 3.6 A), and East City Jct (MP 3.8 NT) to Oliver Jct (MP 7.9 NT)	NS today; NOTR after closing	NS	Own, maintain and dispatch
D. NO&NE segment	Oliver Jct (MP NO 194.1) to CP Seabrook (MP NO 190.6),	NS (unchanged)	NS	Dispatch only
E. UP Avondale Sub	BNSF Connection (MP 14.9) to West Bridge Jct (MP 10.5),	UP (unchanged)	UP (unchanged)	Trackage rights for NOTR crews

NOTR will need the following written agreements before it takes control of the segments they cover (Operating Plan Section 2):

1. A Back Belt purchase agreement or long term lease.
2. A joint facility, dispatching and operating agreement with NOPB for the Huey P. Long Bridge.

3. A joint facility, dispatching and operating agreement with CN for the CN segment and the CN interlockers between East Bridge Junction and the CN/IC Connection.
4. A joint facility, dispatching and operating agreement with UP (or NS) for the NO&NE segment
5. An incidental operating rights agreement with UP for the Avondale Subdivision in order to clear or move trains from the Huey P Long Bridge or move them from UP or BNSF Avondale yards onto the NOTR dispatched line which begins at West Bridge Jct,
6. A master user agreement that every carrier using the Back Belt may sign on the same terms, covering operating rights, the tariff, the priority order, delay reporting, audit rights, and data-sharing and cybersecurity terms.
7. A master emergency crew relief agreement that any Class I carrier may join, including the use of the carrier's locomotives.
8. An Amtrak hosting agreement.
9. PTC implementation agreement(s) with NOPB (if one exist), CN and UP (NS Legacy Back Belt).
10. Maintenance and emergency response agreements with track, bridge, signal and emergency-response contractors.
11. Assignment of the existing public agreements on the Back Belt from NS to NOTR, including grade crossing agreements and the Metairie Quiet Zone.
12. An affiliate services agreement with CLR for the backup dispatch consoles at CLR's Houston and Los Angeles offices.

C. Neutrality Built Into the Structure

Approving the merger without changing who controls the New Orleans Terminal Area would leave the merged UP/NS deciding, in the first instance, which train moves first while its own trains wait in the same queue. Once a competitor's train has been delayed, a later complaint cannot give the crew its time back or recover the delay in service. Those delays can extend beyond New Orleans reverberating across multiple if not all of the class I's networks impacting their operations for potentially hundreds of miles increasing crew, equipment, and inventory costs. Locations where UP is supposed to be a neutral dispatcher do not have the same levels of connectivity between railroads such as the Houston Terminal and surrounding areas. BNSF recently brought to the Board's attention multiple dispatching issues with UP prioritizing its own train traffic in alleged violation the terms of the UP-SP merger agreement between BNSF and UP.

STB Docket No. FD 32760 (Sub-No. 52), *BNSF Railway Company— Petition for Review—UP/SP Merger Conditions.*

I see those as serious operating and commercial risks, not necessarily inevitable outcomes. My concern is the operating problem that remains while the parties disagree: trains still need to move. That is why I favor preventing the conflict through independent dispatching rather than relying on STB oversight and related litigation after the fact. Approving NOTR would reduce or eliminate those risks by placing those decisions with an independent dispatcher subject to published rules, delay reporting and regulatory oversight.

UP has made the same basic point about other terminals. In the Revised Application's discussion of St. Louis and Kansas City, it explains that shared terminals need neutral, coordinated operations because preferential treatment can create bottlenecks and slow the network. In fact, the Revised Application discusses how terminal railroads are required to be neutral by law.[6] If UP and NS merge how with the New Orleans Gateway have a neutral terminal when UP will continue to dispatch across the Huey P Long Bridge and will own the current NS Back Belt onward. There is no way to logically make an argument that the New Orleans Gateway will be under neutral control with the proposed UP operation. UP and CN also announced a framework under which CN would acquire NS's interests in the Kansas City Terminal Railway and the Terminal Railroad Association of St. Louis, contingent on merger approval and closing.[7]. New Orleans deserves the same level of neutrality that other Gateway cities have today. The Gateway is likely to continue to grow;

[6] K. Novak, Separating Fact from Fiction: TRRA and the Union Pacific-Norfolk Southern Merger, Union Pacific (July 8, 2026), https://www.up.com/news/service/trra-merger-260708.

[7] Union Pacific Railroad, Union Pacific and CN Reach Agreement to Expand Customer Opportunities in Connection with Merger (July 22, 2026), https://www.up.com/press-releases/growth/up-cn-customer-opportunities-260722.

especially if the merger is approved as UP and NS during their integration intend to route traffic through the New Orleans Gateway that today is currently interchanging in Memphis and East St. Louis. Interchanges are made at these locations to maximize the length of line haul for UP today. NOTR's answer is a dispatcher with no Class I ownership and no line-haul revenue interest.

Other multi-carrier terminals show that a separate operator can do this work. Pacific Harbor Line was created in 1998 to unify rail operations at the Los Angeles and Long Beach port complex. It provides transportation, maintenance and dispatching services, and its stated mission is neutrality toward both ports, BNSF, UP and terminal customers.[8] Its operating agreements were extended through 2026 while the ports sought bids for the next contracts. This is an operating example, not a legal precedent, and I am not offering it as proof of any particular performance result. The point is that a separate terminal operator can organize the work around the needs of multiple users.

The Alameda Corridor is another example, although its ownership differs from what NOTR proposes. Alameda Belt Line dispatches BNSF and UP movements through the corridor.[9] The Port of Long Beach's September 2026 notice states that Alameda Belt Line was selected to perform those services on July 22, 2024, and would continue under an extension through October 14, 2028.[10] Alameda Belt Line is a BNSF-UP joint venture that draws on its owners' operating

[8] Anacostia Rail Holdings, PHL: Pacific Harbor Line, https://www.anacostia.com/our-companies/phl/; Progressive Railroading, LA-Area Ports Extend Pacific Harbor Line Contracts Through 2026 (Aug. 4, 2025).

[9] Alameda Corridor Transportation Authority, Dispatching, https://www.acta.org/about/what-we-do/dispatching/.

[10] Port of Long Beach, Notice of Mutual Agreement No. 2026-1; Approval of a Two-Year Term Extension for the Alameda Corridor Dispatch Agreement, SCH No. 2026090593 (Sept. 15, 2026), https://ceqanet.lci.ca.gov/2026090593.

experience, so it is not independent of Class I ownership.[11] It does show how a separate company can bring experienced people together for a specific dispatching assignment. NOTR proposes to do that without a Class I ownership interest and must demonstrate its own readiness.

D. Rates and Charges

NOTR will not quote, participate in or share any line-haul rate or division, and will hold no interest in any line-haul carrier. It will publish one non-discriminatory tariff that is based on competitive rates of other terminal railroad operations and applies to all similarly situated carriers.. NOTR is not proposing specific rates or charges in this statement. Rates will be based on the economics of purchasing the Back Belt, including the purchase price, the railroad industry cost of capital, initial capital requirements, maintenance and dispatching costs. If the acquisition is by lease, rates will be based on the lease terms and maintenance and dispatching costs.

NOTR also does not have visibility into the terms of the agreements of the railroads that use the Back Belt today, and the agreements in Section III.A will identify which charges NOTR controls and which belong to NOPB or another party. NOTR intends to establish long-term (50 year), published rates with a defined escalator so users know what it will cost to use the New Orleans Terminal Area and how that cost will change over time.

NOTR will not charge Amtrak an hosting fee and will retain the existing payment structure for Amtrak. NOTR will not charge NOPB for any of its moves over the Huey P. Long Bridge, and after the Back Belt sale is approved NOPB will be granted operating rights across the Back Belt and have up to 2 trains per day (up to 100 cars each) at no charge on the Back Belt for trains that originate or terminate on NOPB track for local industry service (not overhead interchange

[11] Alameda Belt Line, Welcome to California's Freight Future, https://ablrail.com/.

movements). Other NOPB Back Belt moves will pay the same per-car rate as Class I overhead traffic.

F. Implementation and Interim Operations

NOTR will work aggressively to solidify all necessary agreements as previously detailed, building and testing the primary and backup dispatch centers, hiring and qualifying the team, joint testing and shadow dispatching with the current dispatchers, cutover, and stabilization (Operating Plan Section 14). Until NOTR takes control of a segment, the current dispatchers (UP, NS and CN) keep dispatching it under existing arrangements, so there is no gap in dispatching authority at any point. NOTR will begin training employees as early as feasible after the merger's effective date consistent with the timing of the Applicants' integration plans. The biggest variable is the Back Belt purchase price or other satisfactory commercial mechanism. The sooner NOTR and UP/NS agree on it, the sooner everything else can move forward, including the development of NOTR's tariff.

III. Conclusion

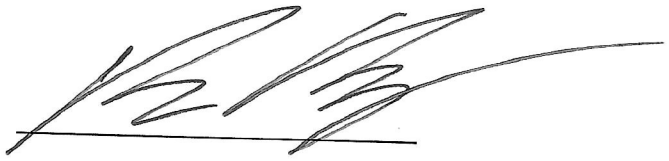
Today, two carriers with freight in the queue decide the order in which trains cross the New Orleans Terminal Area. After the merger, one carrier would control those critical assets and make that decision for its four Class I competitors, NOPB and Amtrak. The New Orleans Gateway is critical to the nation's overall rail network and deserves to operate with the same neutrality that the other Gateway's that have most if not Class I carriers present- East St. Louis, Kansas City, and Chicago. A neutral gateway in New Orleans is critical to the future health of the southern U.S. rail network. A merged UP and NS cannot offer a neutral gateway and dispatch the entire New Orleans Terminal Area. The merged railroad's plan for New Orleans is counter-intuitive to their

multiple comments about the criticality of neutral gateways and the need for neutral terminal railroads. NOTR addresses that conflict with the same tariff, the same rules and the same dispatcher for every carrier, and with no Class I ownership and no line-haul revenue at stake in which train moves first.

VERIFICATION

I, Bryan Boaz, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to sponsor this testimony.

Executed: November 16, 2026.



Bryan Boaz

BRYAN BOAZ

EXHIBIT A

President, New Orleans Terminal Railroad Company, LLC | Chief Commercial Officer, CLR

535 W. 20th Street, Suite 250, Houston, Texas 77008 | (346) 234-6162 | bboaz@clrail.com

23	350,000+	100+	2
years in freight rail, most of them on the Gulf Coast	loaded railcars per year across ExxonMobil North American rail	switching, storage and transload agreements overseen	appointments to the STB Rail Energy Transportation Advisory Committee

PROFILE

Rail operations and commercial executive who has worked nearly every side of the interchange: the operating ranks of a Class I railroad, in-plant switching and terminal services, rail logistics for two of North America's largest energy shippers, and now short line and terminal development at CLR. At ExxonMobil, made the daily routing, storage and interchange calls that moved tens of thousands of railcars through the **New Orleans gateway** with every Class I carrier and NOPB, including during hurricanes, ice storms, derailments and other network outages. Works directly with all six Class I railroads and serves on the STB's RETAC.

PROFESSIONAL EXPERIENCE

CLR (County Line Rail) | Houston, TX — Jul 2025 – Present

President, New Orleans Terminal Railroad Company, LLC (NOTR) — *Sep 2026 – Present*

1. Leads NOTR's Responsive Application in STB Docket No. FD 36873, proposing a neutral terminal railroad (no Class I ownership) to own about 7.7 miles of the New Orleans Back Belt and dispatch about 16.4 miles of the gateway, including the Huey P. Long Bridge.
2. Wrote NOTR's Operating Plan and Train Dispatcher's Manual, covering dispatch center design, published priority rules, delay coding and reporting, neutrality safeguards and an emergency crew relief framework open to every Class I.

Chief Commercial Officer — *Jul 2025 – Present*

1. Leads sales, marketing and growth for CLR's freight, transload and railcar storage network: County Line Industrial Park (CLIP) in Mont Belvieu, CLR Silsbee, CLR Buna and the Sabine River & Northern Railroad (SRN), a 40-mile Class III short line that interchanges with UP, BNSF and CPKC.
2. Negotiates short line pricing, switching and access terms with Class I partners, and pursues acquisition and greenfield opportunities for new rail-served terminals and short lines.

ExxonMobil | Spring, TX — Jan 2019 – May 2025

Gulf Coast Rail Operations Lead; Rail Planning & Operations Field Supervisor; Project Lead, Upstream Petcoke Supply Chain; Rail Safety Practices Leader

1. Led Gulf Coast Rail Operations and oversaw Canadian asset operations within ExxonMobil's North American rail network, which ships well over 350,000 loaded railcars per year with a fleet of about 38,000 railcars (the majority originating on the Gulf Coast, with other high-volume origins at Edmonton and other Canadian sites).

2. Oversaw 100+ agreements for railcar switching, storage and transloading across North America, and wrote the operating language used in the company's commercial storage and switching agreements.
3. From 2019 to 2024, took control of all ExxonMobil shipments that were impacted or at risk of being impacted by network disruptions, rerouting thousands of shipments off NOPB and across the Back Belt using different connecting carriers.
4. Delivered best-in-class management of rail shipments to customers during severe weather events, and expedited critical chemicals at the height of the COVID-19 pandemic.
5. Led ExxonMobil's Rail Quick Response Team, which participated in the company's Emergency Response Group, and led rail safety for ExxonMobil globally.
6. Assembled most of a team that was (and still is) among the industry's most talented groups of rail coordination and railroad operations experts.
7. Roughly tripled the scope of the role after 2019 by taking on additional areas of the Rail Planning & Operations group, including decisions on the company's storage network and new storage capacity.

Enbridge Energy | Houston, TX **Nov 2012 – Jan 2019**

Merchant Terminals Business Development Manager; Rail Business Development Manager; Rail Specialist

1. Led commercial negotiations for Enbridge's U.S. crude storage and blending operations, with connectivity to most of the critical U.S. crude pipelines.
2. Led Enbridge's crude-by-rail business through a period of major regulatory and market change, and supported the divestiture of a sizeable terminal.
3. Developed and implemented the rail safety program for Enbridge's railcars and rail facilities, and managed rail assets for two wholly owned trading companies.

Railserve, Inc. | Houston, TX **Jul 2011 – Nov 2012**

Director of Business Development

1. Developed new in-plant switching, locomotive leasing and transloading business in the petrochemical and energy markets, including new business with Enbridge Energy, and posted what was then the fastest new customer acquisition in company history.

The Kansas City Southern Railway Company | Shreveport, Tuscaloosa, Jackson, Kansas City **2003 – 2011**

Director of International Business Development; Road Trainmaster; Terminal Trainmaster; Assistant Trainmaster; Conductor

1. Started as a conductor trainee in 2003 and rose through the operating ranks to become KCS's first Director of International Business Development, reporting directly to members of the C-suite (including the CEO) on capital planning and strategic projects in the U.S. and Mexico, and working on projects for Executive Chairman Mike Haverty.
2. Helped redevelop KCS's operating strategy and commercial agreements in the New Orleans gateway after Hurricane Katrina (2005), and helped build KCS's ability to move in-bond traffic from Mexico into the U.S.
3. Turned the railroad's worst performing subdivision for safety and on-time performance into its best within six months.
4. Key team member on the rebuild of the Rosenberg Subdivision and on the transition of the Tuscaloosa Subdivision from KCS to Watco; served as acting Terminal Director at Shreveport Yard for nearly one year while an Assistant Trainmaster.

REGULATORY & INDUSTRY LEADERSHIP

1. **Member, STB Rail Energy Transportation Advisory Committee (RETAC).** Appointed in 2023 by Chairman Martin Oberman; reappointed in 2026 by Chairman Patrick Fuchs. Currently serving a second term.
2. **Member, American Petroleum Institute Rail Subcommittee, 2014 – 2025; Chairman for at least half of that time.** Led industry initiatives on rail service improvement and engaged STB members and members of Congress from both parties.

3. **White House Travel Office Advance Team, 2001 – 2003.**
4. **Multi-generational railroader.** Family members worked as engineers and conductors for the Cotton Belt, Santa Fe and L&N.

EDUCATION

Master of Business Administration | University of Phoenix **2007**
Bachelor of Business Administration | Baylor University, Waco, TX **2003**

PUBLIC VERSION

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36873	)	**Union Pacific Corporation and Union Pacific Railroad Company -Control- Norfolk Southern Corporation and Norfolk Southern Railway Company**

Verified Statement

of

Timothy D. Crowley
President

and

Daniel L. Fapp
Senior Vice President

L.E. PEABODY & ASSOCIATES

On Behalf Of

NEW ORLEANS TERMINAL RAILROAD, LLC (NOTR)

November 17, 2026

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LIST OF EXHIBITS

Exhibit No.	Exhibit Title
1	Timothy D. Crowley Statement of Qualifications
2	Daniel L. Fapp Statement of Qualifications

I. INTRODUCTION

We are Timothy D. Crowley and Daniel L. Fapp, President and Senior Vice President, respectively, of L.E. Peabody & Associates, Inc., an economic consulting firm that specializes in solving economic, transportation, marketing, financial, accounting, and fuel supply problems. We have spent most of our consulting careers of 24 and 28 years, respectively, evaluating railroad revenue, operations, capacity, costs, and profitability and pricing issues for shippers, producers, railroads and government agencies. Our credentials are included as Exhibit Nos. 1 and 2 to this Verified Statement (VS), respectively.

We were requested by Counsel for NOTR to evaluate the train volumes moving over the Norfolk Southern Railway Company's (NS) Back Belt Line (Back Belt) in New Orleans, Louisiana, to determine the market impact of NOTR's acquiring the Back Belt from NS and dispatching rail traffic across the Back Belt and adjacent lines as a neutral terminal carrier, and to evaluate the timing of NOTR's assumption of the dispatching function over the Back Belt and adjacent lines based on filings made by NS and Union Pacific Railroad Company (UP) (hereinafter also known as the Applicants).

The results of our review and analyses are summarized in the remainder of this VS under the following topical headings:

II. Summary of Findings
III. Back Belt Train Volumes
IV. NOTR Market Analysis
V. NOTR Dispatching

II. SUMMARY OF FINDINGS

Based on our review and analyses of the documents produced in this proceeding and on our experience within the railroad industry, we have reached the conclusions set forth below:

1. The Applicants' train counts omit ten foreign train symbols, namely CSX Transportation (CSX) and BNSF Railway Company (BNSF) trains, which operate over the Back Belt. The Applicants' own workpapers show that these trains were identified and then left out of its MultiRail capacity analysis. When the foreign trains omitted from the Applicants' density reports are added to the trains identified by the Applicants moving over the Back Belt, the corrected counts are consistent with train counts operating over the Back Belt as reported in the Surface Transportation Board (STB) Amtrak Gulf Coast proceeding.

2. The Applicants' capacity analysis also does not account for the switching, holds and crossings that Canadian National Railway Company (CN) and Canadian Pacific Kansas City Limited (CPKC) create at the west end of the Back Belt.

3. The Applicants' omission of foreign trains operating over the Back Belt and failure to account for traffic crossing the Back Belt at its west-end is a critical omission in their post-merger operating plan and shows why a neutral dispatcher is needed. NOTR will plan its dispatching around the combined demands of all railroads operating in the New Orleans Terminal Area and not just the traffic of UP, NS and Amtrak.

4. The relevant product market is terminal access and interchange service over the Back Belt, and the relevant geographic market is the New Orleans Terminal Area. The NOTR proposal does not create a new market or change its boundaries, because only the operator and dispatcher of the Back Belt change from NS to NOTR.

5. The size of the relevant product market is at least as large as the Applicants' data show, and its true size cannot be determined without the CN, CPKC and foreign train data that the Applicants' capacity analysis omits.

6. The Applicants' proposed Committed Gateway Pricing condition does not address the operation of the New Orleans Terminal Area or service across this gateway. As other railroads have noted in this proceeding, Committed Gateway Pricing is only a pricing mechanism and not a service mechanism.

7. The Board has treated neutral terminal operation as a means of preserving competition in prior merger proceedings. In this proceeding, the Applicants have not made any commitment to operate the Back Belt on a neutral basis.

8. UP has demonstrated its ability to prioritize the dispatching of its own trains over BNSF trains in direct violation of an agreement resulting from the UP/SP merger. BNSF alleges that UP failed to dispatch BNSF's trains on a neutral basis over lines that UP controls.

9. The Applicants proposed no practical solution to preserving access and maintaining competition in the key New Orleans Terminal Area, similar to what it did propose for the Kansas City Terminal Railway (KCT) and the Terminal Railroad Association of St. Louis (TRRA) in an agreement with CN.

10. The Applicants' operational integration roadmap shows that integrating UP and NS dispatching is a multi-year undertaking. The Applicants expect to complete fully integrating their dispatching function roughly three years after closing.

11. NOTR's set-up and integration task is much narrower than the Applicants' integration. NOTR's dispatching start-up can therefore be accommodated within the Applicants' own integration period without delaying or complicating it. Once NOTR assumes dispatching of the Back Belt, that territory would also no longer need to be migrated, which narrows the Applicants' own integration task.

III. BACK BELT TRAIN VOLUMES

The Back Belt is the NS line that carries freight and passenger trains between the west end of the New Orleans Terminal Area, where it connects with the CN/IC Connection, and Oliver Junction near the NS Oliver Yard on the east end. NS operates its own trains over the line. UP, BNSF, and CSX, as well as Amtrak, also operate trains over all or various portions of the Back Belt. CN, CPKC and New Orleans Public Belt Railroad (NOPB) operate at the west end of the Back Belt, but do not operate interchange trains over the Back Belt according to data included by the Applicants as discussed below.

A. THE APPLICANTS' BASE PERIOD TRAIN COUNT

The Applicants submitted a capacity analysis with their April 30, 2026 Revised Major Merger Application (Revised Application) that developed the existing pre-merger train volumes through the New Orleans Terminal Area. The Applicants relied upon Oliver Wyman, LLC to develop the analysis utilizing Oliver Wyman's proprietary rail network planning tool MultiRail using a combination of actual UP and NS traffic data and train schedules. The Applicants' workpapers indicated an average of {{ [redacted] }} freight trains and {{ [redacted] }} passenger trains operate over the Back Belt per day in the Base Period, for a total of {{ [redacted] }} trains per day.[1]

The freight trains consist of a mix of manifest, local and bulk trains. The Applicants' data identifies {{ [redacted] }} of the trains as NS-related movements going from {{ [redacted] }} The remaining {{ [redacted]

[1] *See,* workpaper "Train Count Summary (Final).xlsx," tab "Route Trains Summary." The train counts included in our workpapers differ from the publicly reported train counts reported by the Applicants due to how the train counts are weighted. NOTR is concerned with the total number of trains that operate over the Back Belt line, so we have counted the number of trains that operate over any portion of the line. In their publicly reported workpapers, the Applicants report a distance-weighted number of trains operating over the line, so if a train only operates over half of the segment, the Applicants counted 0.5 trains for that segment.

[redacted] }}.

UP trains therefore account for about{{ [redacted] }} of the freight trains in the Applicants' output data, which shows that the Back Belt is already used far more by a foreign railroad than by legacy NS itself.

The passenger trains consist of six Amtrak trains operating daily between East City Junction and Oliver Junction and two Sunset Limited movements, each operating three days per week, between Avondale and Metairie Road. These passenger counts correspond to the weekly Amtrak schedules for the Crescent (14 trains per week), the Mardi Gras service (28 trains per week) and the Sunset Limited (six trains per week), which total 48 trains per week, or 6.86 trains per day.[2]

B. FOREIGN TRAINS OMITTED BY THE APPLICANTS

The pre-merger train counts in the Applicants' capacity analysis account only for UP and NS freight trains and Amtrak passenger trains. They do not account for the foreign trains, namely CSX and BNSF trains, that also operate over the Back Belt. Documents submitted by Oliver Wyman supporting the Applicants' capacity analysis indicate that regular UP and NS trains were identified through one process but foreign trains were identified through another.[3] Because of this apparent mismatch in processes, foreign trains were excluded from the train count moving over the Back Belt in the Applicants' capacity analysis.

Our review of Oliver Wyman's workpapers supporting the Applicants' capacity analysis identified {{ [redacted]

[2] *See,* NOTR's Description of Responsive Application, filed September 4, 2026 at note 8 (stating that the Amtrak Crescent operates 14 trains per week, the Amtrak Sunset Limited operates six trains per week and, with the reintroduction of the Mardi Gras service, Amtrak operates 28 trains per week between New Orleans and Mobile, for a total of 48 trains per week, or 6.86 trains per day).

[3] *See,* Gehringer/Orr workpaper "C-Base Plan.pdf" at 29.

[redacted] }}.[4] For some reason undisclosed by the Applicants, these trains were excluded from the Applicants' capacity analysis. If they were included in the pre-merger train counts, there would be {{ [redacted] }}. The omitted foreign trains therefore represent about {{ [redacted] }}.

C. THE COMBINED TRAIN COUNTS ARE CONSISTENT WITH PRIOR REPORTING OF BACK BELT TRAIN COUNTS

Publicly available information submitted by NS and CSX in STB Docket No. FD 36496, *Application of the National Railroad Passenger Corporation Under 49 U.S.C. § 24308(e) – CSX Transportation, Inc. and Norfolk Southern Corporation*, filed December 23, 2021 (*Amtrak Gulf Coast*), in which the Board considered Amtrak's request to recommence service from New Orleans, Louisiana, to Mobile, Alabama, confirms that CSX and BNSF trains, in addition to NS and UP trains, operate over the Back Belt. A report submitted by NS and CSX and prepared by their experts, HNTB Corporation and R.L. Banks & Associates, Inc. (Rebuttal Report), identified 14 freight trains per day operating over the Back Belt.[5] According to NS and CSX's experts, four trains per day interchange directly with NS and ten additional trains per day cross the NS line while moving between CSX and other railroads.[6]

The Applicants' workpaper data are consistent with that record, when the foreign trains in the NS input data are added to the output data. The combined input and output total of {{ [redacted]

[4] *See,* workpaper "Train Count Summary (Final).xlsx", tab "NS Foreign Train Summary".

[5] *See,* HNTB Corporation and R.L. Banks & Associates, Inc., *2021 New Orleans – Mobile Gulf Coast Passenger Service RTC Modeling Rebuttal Report*, filed Dec. 23, 2021 (Rebuttal Report) at 36, Public Version.

[6] *Id*.

[redacted] }}, of the 14 freight trains per day that the NS and CSX experts identified. The output data alone, at {{ [redacted] }}.

On the passenger side, the Rebuttal Report describes two Crescent trains per day plus four proposed Gulf Coast trains per day, which equals the six daily Amtrak trains in the Applicants' data.[7] Both the Applicants' data and the Amtrak Gulf Coast record also reflect Sunset Limited service three days per week in each direction.

In total, the combined data submitted by the Applicants in this proceeding show {{ [redacted] }} against 20 trains per day in the Rebuttal Report, whereas the output data alone shows {{ [redacted] }} trains per day while the Applicants public data shows 8 to 14 trains per day as summarized on the STB's Environmental Review website.

D. APPLICANTS' DATA DOES NOT TAKE INTO CONSIDERATION TRAINS OPERATING AT THE WEST END OF THE BACK BELT

The total of {{ [redacted] }} trains per day still does not reflect all of the activity on the Back Belt, because it excludes switching and train crossings at the west end of the line. The Applicants' capacity analysis is built from UP, NS, and Amtrak train plans only. The movements, holds, and conflicts created by CN and CPKC as they deliver and receive cars at the west end of the Back Belt are therefore not accounted for. The Board has already observed, in the commuter and passenger rail portion of the Technical Appendix to *Decision No. 9*, that the Applicants' filing appears to omit entirely several services hosted by UP and NS.[8] It appears that the Applicants

[7] *See,* Rebuttal Report at 38.

[8] *See,* STB Finance Docket No. 36873 *Union Pacific Corporation and Union Pacific Railroad Company - Control - Norfolk Southern Corporation and Norfolk Southern Railway Company, Decision No. 9*, served Jan. 16, 2026 (*Decision No. 9*), at 14.

failed to include additional CN and CPKC freight traffic in their analysis as well.[9] The dispatching of the Back Belt by NOTR will therefore be planned around the combined demands of all of the interchanging railroads and will not be limited to the approximately 20 freight and passenger trains per day identified in the Applicants' data as corrected.

The Applicants' inclusion of only UP, NS and Amtrak trains in their Revised Application is indicative of how they view the New Orleans gateway. Their failure to identify all of the traffic traversing, or operating at the west end of, the Back Belt represents a critical omission in their post-merger operating plan and foreshadows their use of market power in the New Orleans Terminal Area. The potential for capacity rationing highlights the necessity for NOTR, a neutral third party, to dispatch the Back Belt and to account for all traffic and not just the traffic of UP and NS.

[9] *See*, Bates No. NS_00698443, included in workpaper "NS_00698443.tif". CN trains operate at the very west end of the Back Belt where the NS connects to the CN line at the CN/IC Connection. CPKC operates over the Back Belt for approximately 0.6 miles between CN/IC Connection and Shrewsbury to reach its West Yard at Metairie.

IV. NOTR MARKET ANALYSIS

Every application filed under 49 U.S.C. § 11343 and the Board's regulations in 49 C.F.R. Part 1180 must contain a description of the relevant markets and a discussion of whether the transaction would lessen competition, create a monopoly, or restrain trade.[10] The Board's general policy is that it does not favor consolidations that reduce the transportation alternatives available to shippers, and it recognizes that intramodal competition can be reduced when carriers serving the same origins or destinations are combined.[11] In its decision in STB Finance Docket No. 32760, *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company - Control and Merger - Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company*, served August 12, 1996 (*Decision No. 44*), the Board approached that question by identifying the points at which shippers would lose a competitive alternative as a result of the merger. This included identifying points served directly or through reciprocal switching by the two merging carriers and by no other Class I railroad and remedying the loss through access for a replacement carrier.[12]

The Board also imposes conditions only where they address harm that the merger causes. In STB Finance Docket No. 36500, *Canadian Pacific Railway Limited et al. - Control - Kansas City Southern et al.,* served March 15, 2023 (*Decision No. 35*), the Board stated that it will not impose conditions to ameliorate longstanding problems that were not created by the merger and that any condition must be narrowly tailored to remedy the harm it is intended to address.[13] The

[10] *See,* 49 C.F.R. § 1180.6(a)(2)(i).

[11] *See,* 49 C.F.R. § 1180.1(a) and (c)(2)(i).

[12] *See, Decision No. 44* at 121-122.

[13] *See, Decision No. 35* at 20-21.

market analysis below is organized around those principles. It identifies the market, measures it with the traffic volumes developed in Section III, and shows that the condition proposed by NOTR is tailored to eliminate a harm that the proposed merger itself would create.

A. RELEVANT MARKETS

The relevant product market for the Back Belt transaction is terminal access and interchange service over the Back Belt. This consists of the dispatching, interchange and run-through movements that the railroads serving New Orleans depend on to connect with one another and with local customers.

The relevant geographic market is the New Orleans Terminal Area. All of the Class I railroads operate in the New Orleans Terminal Area along with NOPB and Amtrak, and the majority of the traffic across all carriers in the terminal passes over the NS-owned and operated line of which the Back Belt is a part. The NOTR proposal will not create a new market or alter the boundaries of this one. The infrastructure, the customers, the connecting carriers, and the routes will not change. Only the operator and dispatcher of the Back Belt will change: from NS to NOTR.

B. TRAFFIC VOLUMES DEFINE THE MARKET

How traffic currently moves in and around the New Orleans Terminal Area also defines the relevant market. The traffic volumes developed in Section III above define the market floor. The Applicants' own data show {{ [redacted] }}, and NS and CSX statements in the public record support a comparable total of 20 trains per day. Traffic volumes across or adjacent to the Back Belt from CN and CPKC, which have not been disclosed in this proceeding, reflect the market ceiling when they are combined with the traffic of the other Class I railroads and Amtrak.

The market is therefore at least as large as the Applicants' data show, and its true size cannot be determined without the interchange and cross-traffic data that the Applicants' capacity analysis omits.

C. EFFECT OF THE PROPOSED TRANSACTION ON THE MARKET

The divestiture, or lease, of the Back Belt to NOTR preserves the existing market and removes the risk that the merger of UP and NS would otherwise create within it. Under NS ownership, the Back Belt is dispatched by one carrier whose interests in interchange are limited to its own traffic. After the merger, the same line would be dispatched by a carrier that combines UP, which already operates freight trains on the line, with NS, and that merged carrier, UP/NS, would control the access of every other railroad to the New Orleans gateway. Under current operations, NS can interchange with UP or BNSF, and UP can interchange with NS or CSX. After the merger, however, the Applicants will market single line service and reduce interchange traffic. This has the potential for a large impact on competition in New Orleans and along the Gulf Coast. Fewer interchange moves available to CSX and BNSF could result in reduced competition from combined CSX/BNSF movements.

In *Decision No. 9*, the Board recognized the same kind of risk when it observed that control of a terminal and switching carrier by a majority owner raises the potential for manipulation in the owner's interest and found that governance restrictions did not make it clear that no anticompetitive effects would result.[14] The Applicants' proposed Committed Gateway Pricing (CGP) condition does not address the operation of the New Orleans terminal, nor does CGP

[14] *See*, Decision No. 9 at 11.

address services across a gateway. As noted by both CSX and CPKC, CGP is only a pricing mechanism and not a service mechanism.[15]

NOTR, by contrast, has no affiliation with any Class I railroad, will dispatch and operate the Back Belt on a neutral basis, and will be open to all of the Class I railroads that interconnect at New Orleans. No point served by the Back Belt would move from three or two serving railroads to fewer, and the dispatching function will reside with a neutral party. The proposed transaction is therefore tailored to a harm that the merger would create, namely the combination of ownership and dispatching control of the principal pathways through the gateway in a single commercially interested carrier, and it does not seek to remedy a longstanding problem that the merger did not cause.

D. STB PRECEDENT ON NEUTRAL TERMINAL OPERATIONS

The Board has treated neutral terminal operation as a means of preserving competition where a transaction would otherwise change control of terminal assets. In Finance Docket No. 33388, *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company— Control and Operating Leases/Agreements —Conrail Inc. and Consolidated Rail Corporation, Decision No. 89*, served July 20, 1998 *(Decision No. 89*), the Board examined the shared assets areas that CSX and NS would use to serve North Jersey, South Jersey and Philadelphia, and Detroit, and concluded that the new operations would not lead to significant service failures. In addition, the Board found that the shared switching areas "actually

[15] See, CSX Transportation Inc.'s Motion for Summary Denial, filed August 6, 2026 at 3 "Offers as its "sole competitive enhancement" (Decision 21, slip op. at 21) a pricing mechanism ('CGP') that creates no new rail options for shippers…" and CPKC's August 6, 2026 Letter to the STB's Chief of Case Administration at 13, "Although Applicants attempt to rebrand CGP as creating "new haulage-like opportunities," it is nothing more than a rate-setting program. CGP governs only the prices (i.e., revenue requirements) that post-merger UP will charge for a narrow subset of East-West manifest carload movements (excluding intermodal, automotive, and vast swaths of other traffic). It does not provide shippers with access to another rail carrier."

expand competitive opportunities."[16] NOTR proposes the same neutral operation here as a condition that is narrowly tailored to the competitive risk that the UP/NS merger creates at New Orleans.

We have not identified in the Applicants' Revised Application any commitment to operate the Back Belt on a neutral basis. Under those circumstances, the neutral operation and dispatching that NOTR proposes is a narrowly tailored way to preserve the competitive market that exists in New Orleans today.

1. UP'S RECORD ON NEUTRAL TERMINAL OPERATIONS

The risk that a combined UP and NS would favor its own traffic in dispatching the Huey P. Long Bridge and the Back Belt is not merely theoretical. In its petition in STB Docket No. FD 32760 (Sub-No. 52), *BNSF Railway Company -- Petition for Review – UP/SP Merger Conditions*, filed November 28, 2025 (*BNSF Petition*), BNSF alleges that UP has failed to dispatch BNSF's trains on a neutral basis over lines that UP controls. BNSF states:

> As stipulated in the RASA, UP is required to dispatch trains in accordance with the established Dispatching Protocols, providing equal treatment—without discrimination in terms of promptness, service quality, or efficiency—compared to the traffic of the owning carrier. UP instead has instituted limited operating windows applicable to BNSF traffic at many locations that deviate from the UP/SP Dispatching Protocol, resulting in dispatching practices that favor UP's own traffic over BNSF's. Trains are not dispatched on a first-come, first-served basis, in direct violation of the protocol's neutrality requirement.[17]

[16] See, *Decision No. 89* at 65.

[17] *See, BNSF Petition* at 24-25 (internal citations omitted). The limited operating windows included in *the BNSF Petition* differ from the scheduled windows proposed by NOTR. The operating windows instituted by UP were fixed windows that boxed BNSF into specific operating times. NOTR's scheduled windows are dynamic and based on twice daily planning calls which will set the times based on different factors. Unlike with UP's operating windows, NOTR's scheduled windows will not discriminate against BNSF.

The above demonstrates how an owning carrier that also competes for traffic can be expected to behave once it controls the dispatching of a line on which its competitors depend. This is the specific risk that NOTR's neutral dispatching would remove in the New Orleans Terminal Area.

In approving the UP/SP merger, the Board imposed the settlement agreement between UP and BNSF as a formal merger condition, and that agreement was later restated as the Restated and Amended Settlement Agreement (RASA).[18] The RASA provides that trains of a tenant railroad using the owning carrier's trackage "shall be given equal dispatch without any discrimination in promptness, quality of service, or efficiency in favor of comparable traffic of the owning carrier."[19]

The RASA also addressed the dispatching of a major Mississippi River bridge. The RASA provides that BNSF would vote its interest in the Terminal Railroad Association of St. Louis in favor of transferring dispatching of the MacArthur Bridge at St. Louis to UP. The agreement states that dispatching across the bridge shall be performed in a manner to ensure that all users are treated equally.[20]

The significance of this dispute for NOTR lies in the incentive for the Applicants to prioritize their own traffic over that of other carriers. The RASA addressed the incentive of UP to favor its own traffic by placing behavioral rules on top of continued ownership, including equal dispatch requirements. A condition built only on promises of equal treatment by the owning carrier depends on continuing monitoring by the carriers and eventual enforcement by the carriers involved and the STB. It does not guarantee neutrality. After the proposed UP/NS merger transaction, the Applicants would hold a position in New Orleans where CSX, BNSF, CN, CPKC,

[18] *See, BNSF Petition* at Exhibit A.

[19] *See, BNSF Petition* at Exhibit A at 36.

[20] *See, BNSF Petition* at Exhibit A at 28.

NOPB and Amtrak will all depend on the Applicants' dispatching, but with no clear mechanism to limit the Applicants from prioritizing its own traffic. The only way to truly guarantee equal treatment is through the creation of a neutral terminal carrier such as the NOTR.

In addition, the establishment of NOTR would be consistent with the Applicants' reliance on neutral terminal operations in other regions. In its July 27, 2026 response to the STB's May 26, 2026*, Decision No. 21* in this proceeding, UP discussed the terms of a settlement agreement UP entered with CN, contingent on Board approval and completion of the merger. As part of the agreement, CN would acquire NS's ownership interests in KCT and TRRA (CN would also acquire NS's corresponding board of directors' seats), as well as a portion of UP's ownership interest in Peoria & Pekin Union Railway. CN would also obtain use of UP's Neff Yard in Kansas City.[21] These commitments demonstrate UP's willingness to address gateway concerns through changes in ownership, governance, and access to facilities. Specifically, in regard to keeping key terminals independent, UP states:

> Our goal is to preserve access, maintain competition and keep freight moving efficiently. That's why we've proposed practical solutions, including divesting or reducing ownership stakes.[22]

Applicants made no such demonstration in their Revised Application regarding "practical solutions, including divesting" in the key New Orleans Terminal Area. The Applicants have offered no comparable agreement, order, or divestiture for New Orleans. If the merger is approved, the Back Belt will be a wholly owned UP/NS line with no equal access obligation. This proposed transaction will establish NOTR as a neutral railroad and would preserve competitive access in New Orleans.

[21] *See,* Applicants' Second Response to Decision No. 21, filed July 27, 2026 at 5-6.
[22] *See,* UP July 27, 2026 letter addressed to the STB at p. 2 (pdf p. 4), included in Applicants' Second Response to *Decision No. 21*, filed July 27, 2026.

V. NOTR DISPATCHING

Section 1180.6(a)(1)(ii) of the Responsive Application addresses the proposed time schedule for consummation of the proposed transaction. After receiving approval from the STB to acquire the Back Belt and settling on financial terms for the transaction, the parties can begin the process of transition and integration. Given that the primary benefit of NOTR's acquiring the Back Belt is the provision of neutral dispatching across the line and adjacent areas, the transition to NOTR's dispatching of the lines is a key issue. When NOTR can fully take over the dispatching of the acquired property depends greatly on the Applicants' dispatching transition plan.

The Applicants' own planning shows that the integration of UP and NS dispatching is a multi-year undertaking and that it will be carried out in stages rather than at closing. In discovery, the Applicants produced a presentation titled {{ [redacted] }} (Dispatching Center Presentation), that sets out their preliminary roadmap for combining the two dispatching functions. According to the presentation, the Applicants expect a pre-closing period of approximately {{ [redacted] }}, running from the regulatory filings through approval to closing, during which they would complete {{ [redacted] }}

The roadmap is explicit that {{ [redacted] }}

[23] *See,* {{ [redacted] }}

[redacted] }}[26]

{{ [redacted] }}

The Applicants' timeline shows that NOTR's dispatching start-up can be accommodated within the Applicants' integration period without delaying or complicating it, for several reasons. First, NOTR's task is much narrower. NOTR will dispatch only the Back Belt, the Huey P. Long

[24] *See,* {{ [redacted] }}

[25] *See,* {{ [redacted] }}

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

Bridge, and the NS line to Seabrook, a territory of approximately 16 miles. Second, NOTR plans to use the Wabtec dispatching tools described in its Operating Plan, and it does not need to merge two railroads' systems, crew management platforms or labor agreements.[30] Third, NOTR's implementation is designed in overlapping phases that include baseline assessments, FRA program approval and dispatch center build-out, hiring and qualification, testing and shadow dispatching with the current dispatchers, cutover, and a stabilization period.[31]

Because the Applicants will {{ [redacted] }}, and NOTR's dispatchers will be able to shadow that dispatching during the period in which the Applicants are still working toward their own integration. Once NOTR assumes the dispatching of the Back Belt, that territory would also no longer need to be migrated, which narrows the Applicants' own integration task.

NOTR's cutover would also not be a single event. The Operating Plan provides that NOTR will take over only after the required agreements, trained personnel, PTC arrangements, maintenance readiness, emergency contacts, published tariff and regulator-required programs are in place. In addition, no dispatch cutover will occur until PTC readiness is verified for every PTC-required segment, and cutover can take place segment by segment.[32] That approach is consistent with the Applicants' own practice of activating changes in stages as issues are resolved.

[30] *See,* Boaz VS at 7.

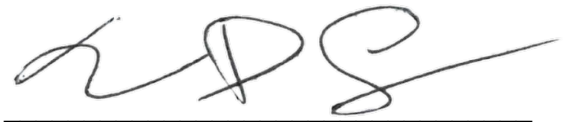
[31] *See,* Boaz VS at 14 and Operating Plan Section 14.

[32] *See,* Operating Plan Section 14.

PUBLIC VERSION

VERIFICATIONS

I, Timothy D. Crowley, verify under penalty of perjury that I have read this Verified Statement on behalf of NOTR, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.



Timothy D. Crowley

Executed on 11/17/26

* * *

I, Daniel L. Fapp, verify under penalty of perjury that I have read this Verified Statement on behalf of NOTR, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.



Daniel L. Fapp

Executed on 11/17/26

LIST OF EXHIBITS

Exhibit No.	Exhibit Title
(1)	(2)
1	Timothy D. Crowley Statement of Qualifications
2	Daniel L. Fapp Statement of Qualifications

My name is Timothy D. Crowley. I am the President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 901 N. Stuart St., Suite 1120, Arlington, Virginia 22203, and 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737.

I received a Bachelor of Science degree in Management with a concentration in Finance from Boston College in 2001 and graduated cum laude. I have been employed by L. E. Peabody & Associates, Inc. since 2002.

I am a member of the American Economic Association ("AEA") and the American Railway Engineering and Maintenance-of-Way Association ("AREMA").

I have extensive experience with the various formulas employed by the Surface Transportation Board ("STB"), including the Uniform Railroad Costing System ("URCS"), which is the STB's general purpose costing system that estimates unit costs and total variable costs for U.S. Class I railroads. I have reviewed and submitted evidence in numerous proceedings before the STB regarding the implementation and update to various components of the URCS process. I was instrumental in the development of L. E. Peabody & Associates, Inc.'s proprietary URCS program. I have utilized the URCS program to develop countless variable cost calculations for rail shipments across North America, including Canada on all class I railroads and various shortline railroads.

I have sponsored evidence for and participated in numerous maximum rate case proceedings at the STB. The evidence that I sponsored in these proceedings included, but was not limited to: qualitative and quantitative market dominance determinations, which utilizes the STB's URCS Phase III costing program; review of traffic and revenues; development of the rail network and operating plan; development of operating expenses and road property investment; and

analyzing results of these analyses in a discounted cash flow model. I have also assisted in developing the return on road property investment realized by major western railroads for specific sections of rail. These studies were used in variable, avoidable, and stand-alone cost analyses.

I have experience with the STB's *Simplified Standards For Rail Rate Cases* issued in Ex Parte 646 (Sub No. 1). I have performed extensive work with the revised guidelines for non-coal proceedings, which incorporates a three-benchmark methodology. The three-benchmark methodology includes calculations using revenue shortfall allocation method ("RSAM"), in which I was trained by members of the STB.

I have been involved and am familiar with procedures used in developing support for Anti-Trust litigation.

I have been involved with Feeder Line Applications presented to the STB, which included evaluating the net liquidation value ("NLV") and going concern value ("GCV") of the subject rail line. I have also conducted numerous NLV and GCV calculations on behalf of our clients for use in the sale or discontinuance of a rail line.

I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, volume commitments, contract reopeners that recognize changes in productivity and cost-based ancillary charges. I have forecasted transportation revenues included in transportation contracts entered into by major companies, taking into account the escalation factors used in specific contracts. Additionally, I have reviewed virtually all major transportation coal contracts between eastern and western railroads and the major consumers of coal in the United States.

I have experience evaluating numerous requests for proposal ("RFP") from both Class I and shortline railroads for the transportation of various commodities via rail, i.e. coal, chemicals, etc. These RFP evaluations included economic, operational, and contractual obligations of the railroads with the goal of obtaining the best and fairest overall transportation package for our clients.

I analyzed and developed cost based rate/price adjustment mechanisms used in long term and short term supply and transportation contracts. I have extensive knowledge of the various rate escalation procedures developed for and employed in transportation and supply contracts. My review of rate escalation procedures demonstrates that application of 100 percent of the change in a price index to existing rate/price levels overcompensates carriers/suppliers for changes in costs.

I have conducted numerous rail transportation marketplace studies to determine the differential between captive and competitive rail shipments for various commodities across all major class I railroads and shortlines.

I have designed and continually monitor economic models which forecast the change in inflation, prices and costs. These economic models forecast general economic indices, certain transportation related indices, certain coal production indices, railroads' cost of providing service and producers' cost of mining coal.

I have managed and assisted in the development of rail car tracking software that is utilized to track the location and status of a client's railcars in real time. This information can be utilized in pursuing service issues with a rail carrier, maintenance costs associated with use of the railcar, and to calculate various transportation statistics including on-time performance.

I have established and managed many large databases used to monitor and track railroad related data, including railroad infrastructure, railroad car and train movements and railroad costs and revenues.

I have provided analytical support for both market place and litigation projects sponsored by L. E. Peabody & Associates, Inc. The analytical support included the gathering, review and manipulation of data from the major Class I railroads, the STB and various other government and public sources. Specifically, the analyses that I have conducted include the development of the transportation costs associated with the movement of chemicals, coal and other products to different destinations located throughout the country.

My name is Daniel L. Fapp. I am a Senior Vice President of the economic consulting Firm of L. E. Peabody & Associates, Inc. The Firm's offices are located at 901 N. Stuart Street, Suite 1120, Arlington, VA 22203; and 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737.

I received a Bachelor of Science degree in Business Administration with an option in Marketing (cum laude) from the California State University, Northridge in 1987, and a Master of Business Administration degree from the University of Arizona's Eller College of Management in 1993, specializing in finance and operations management. I am also a member of Beta Gamma Sigma, the national honor society for collegiate schools of business.

I have been employed by L. E. Peabody & Associates, Inc. since December 1997. Prior to joining L. E. Peabody & Associates, Inc., I was employed by BHP Copper Inc. in the role of Transportation Manager - Finance and Administration, and where I also served as an officer and treasurer of the three BHP Copper Inc. subsidiary common carrier railroads, The San Manual Arizona Railroad, the Magma Arizona Railroad (also known as the BHP Arizona Railroad) and the BHP Nevada Railroad. I have also held operations management positions with Arizona Lithographers in Tucson, AZ and MCA-Universal Studios in Universal City, CA.

While at BHP Copper Inc., I was responsible for all financial and administrative functions of the company's transportation group. I also directed the BHP Copper Inc. subsidiary railroads' cost and revenue accounting staff and managed the San Manuel Arizona Railroad's and BHP Arizona Railroad's dispatchers and the railroad dispatching functions. I served on the company's Commercial and Transportation Management Team and the company's Railroad Acquisition Team where I was responsible for evaluating the acquisition of new railroads, including developing financial and economic assessment models.

I have directed and managed sourcing and core carrier engagements as both a consultant and as an industry practitioner. These engagements have involved the selection of primary and secondary rail, truckload, less-than-truck load, air express and parcel carriers. I have participated in and managed consortium sourcing projects in the small package express and fleet management fields. I have served on the management team overseeing the implementation of a core carrier program and have been involved in and directed negotiations with regional and national truckload carriers.

In my tenure at L. E. Peabody & Associates, Inc., I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, volume commitments, contract reopeners that recognize changes in productivity and cost-based ancillary charges.

As part of my work for L. E. Peabody & Associates, Inc., I have performed and directed numerous projects and analyses undertaken on behalf of utility companies, short line railroads, bulk shippers, and industry and trade associations. Examples of studies which I have participated in organizing and directing include, traffic, operational and cost analyses in connection with the rail movement of coal, metallic ores, pulp and paper products, and other commodities. I have also analyzed multiple car movements, unit train operations, divisions of through rail rates and switching operations throughout the United States. The nature of these studies enabled me to become familiar with the operating procedures utilized by railroads in the normal course of business.

Since 1997, I have participated in the development of cost of service analyses for the movement of bulk and non-bulk commodities over all the major U.S. railroads. I have conducted on-site studies of switching, detention and line-haul activities relating to the handling of coal and chemicals. I have also participated in and managed projects assisting short-line railroads. In these engagements, I assisted short-line railroads in their negotiations with connecting Class I carriers, performed railroad property and business evaluations, and worked on rail line abandonment projects.

I have developed numerous variable cost calculations utilizing the various formulas used by the Surface Transportation Board (STB) for the development of variable costs for common carriers, with particular emphasis on the basis and use of the Uniform Railroad Costing System (URCS). I have submitted testimony on the behalf of complaining shippers before the STB which developed stand-alone costs, traffic forecasts, revenue and contract forecasts, and fuel surcharge forecasts.

I have been frequently called upon to perform financial and economic analyses and assessments of railroad and other transportation companies. I have determined the Going Concern Value of privately held freight and passenger railroads, including developing company specific costs of debt and equity for use in discounting future company cash flows. My consulting assignments regularly involve working with and determining various facets of financial issues, including cost of capital determinations. In these assignments, I have calculated capital structures, market values, cost of debt, cost of preferred equity and common equity. I am also well acquainted with and have used financial industry accepted models for determining a firm's cost of equity,

including Discounted Cash Flow Model (DCF) models, Capital Asset Pricing Model (CAPM), Cost Build-Up models and Arbitrage Pricing Models.

I have also lectured in graduate level finance, economic and supply chain classes and am a member of the Professional Advisory Council for the Eller School of Management Finance Department at the University of Arizona.

I have developed different economic analyses for numerous electric utility companies, manufacturing companies, railroad companies and government agencies located in all parts of the United States, and for major associations, including the American Chemistry Council, the Chlorine Institute, the Fertilizer Institute, Mail Order Association of America, National Coal Association, National Grain and Feed Association, National Industrial Transportation League, North America Freight Car Association and Western Coal Traffic League. In addition, I have assisted numerous government agencies major industries companies in solving various transportation-related problems.

In my tenure with L. E. Peabody & Associates, Inc., I have presented evidence in numerous proceedings before the STB and have presented evidence and testified and presented expert reports before state and Federal courts and in private arbitrations. In conjunction with other L. E. Peabody & Associates, Inc. officers, I have worked on and directed expert reports in a number of court and arbitration proceedings concerning the level of rates, rate adjustment procedures, service, capacity, costing, operating procedures and other economic components of specific contracts.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 2026, copies of the foregoing were served by first class mail upon:

(i) The Governor (or Executive Officer), Public Service Commission, and the Department of Transportation of Louisiana;

(ii) The Secretary of the United States Department of Transportation (Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

(iii) The Attorney General of the United States;

(iv) The Federal Trade Commission; and

by electronic mail on all parties of record on the official service list of Docket No. FD 36873 and Administrative Law Judge Soulikias.

_/ss/ Thomas W. Wilcox
Thomas W. Wilcox